No. 349

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United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

AGAINST

ACY LENNON,

Defendant-Appellant.

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SECOND CIRCUIT

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United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

AGAINST

ALY LENNON,

Defendant-Appellant.

Statement Under Rule 15b

On September 27, 1955, the defendant was indicted on five counts of income tax evasion covering the years 1949 through 1953 inclusive. In response to that indictment the defendant was arraigned and pleaded not guilty. The indictment bore number C-148-204.

Thereafter, and on July 2, 1956, under an indictment bearing number C-150-247, the defendant was indicted again, by a different grand jury. To this latter indictment the defendant also appeared and pleaded not guilty. This second indictment duplicated the first four counts of the first indictment; added an additional item of unreported income to the fifth count of the first indictment; and, included a new sixth count of unreported income for the year 1954.

Both indictments charged offenses under Title 18, U. S. C. A. 145(b).

Statement Under Rule 15b

Various interim proceedings took place prior to trial leading to the service by the Government of a bill of particulars for each indictment.

By order of Hon. Edmund L. Palmieri, District Judge, dated August 21, 1956, the first count of each indictment was severed and the first count of the first indictment was consolidated with and became the first count of the second indictment.

On October 4, 1956, the defendant went to trial on the consolidated indictment before Hon. Archie O. Dawson, District Judge, and a jury.

On October 19, 1956, the jury returned a verdict of "guilty" against the defendant on the first four counts of the indictment; "not guilty" as to the fifth count of the indictment; and, reported a disagreement on the sixth count of the indictment.

On October 22, 1956, the defendant was sentenced to serve a year and a day on the first count of the indictment, and a year each on the second, third and fourth counts—the sentences to run concurrently. The defendant was also fined $1,000 each on the first and second counts.

Judgment of conviction was entered on October 22, 1956.

Throughout the proceedings the Government was represented by Hon. Paul W. Williams, United States Attorney, appearing by Thomas A. Bolan, Esq., Assistant United States Attorney; and the defendant was represented by Leonard Feldman, Esq.

Indictment No. 148-204

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

AGAINST

ACY LENNON,

Defendant

The Grand Jury charges:

That on or about the 15th day of March, 1950, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1949 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,091.25, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,691.25, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $388.39.

(Title 26 U. S. C. Section 145(b)).

Indictment No. 14-204

COUNT TWO

The Grand Jury further charges:

That on or about the 13th day of June, 1951, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1950 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,586.20, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $5,286.20, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $525.41.

(Title 26 U. S. C. Section 145(b)).

COUNT THREE

The Grand Jury further charges:

That on or about the 15th day of March, 1952, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the

calendar year 1951 by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,159.40, that he was entitled to exemptions for "Acy Jr." and "William" as children with 1951 gross incomes of less than $600, who received one-half of their support from him in 1951, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,759.40, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not children with 1951 gross incomes of less than $600, who received more than one-half of their support from him in 1951, and the amount of income tax due to the United States on said return was $488.50.

(Title 26 U. S. C. Section 145(b))

COUNT FOUR

The Grand Jury further charges:

That on or about the 15th day of June, 1953, in the Southern District of New York, Acy Lennon, the defendant herein, who during the calendar year 1952 was married, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952, by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year

was the sum of $2,657.63, that they were entitled to exemptions for "Acy Jr." and "William" as children with 1952 gross incomes of less than $600, who received more than one-half of their support from the said Acy Lennon and his said wife in 1952, and that there was no tax due and owing on said return, whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $4,157.63, they were not entitled to claim the said "Acy Jr." and "William" as exemptions in that the said "Acy Jr." and "William" were not children with 1952 gross incomes of less than $600, who received more than one-half of their support from them in 1952, and the amount of income tax due to the United States of America on said return was $390.19.

(Title 26 U. S. C. Section 145(b)).

PAUL W. WILLIAMS
United States Attorney

JOSEPH W. BARBER
Foreman.

Indictment No. 150-247

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

The Grand Jury charges:

That on or about 15th day of March, 1950, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1949 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,091.25, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,691.25, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $388.39.

(Title 26 U. S. C. Section 145(b)).

Indictment No. 150-247

COUNT TWO

The Grand Jury further charges:

That on or about the 13th day of June, 1951, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1950 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collections District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,586.20, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar years was the sum of $5,286.20, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $525.41.

(Title 26 U.S.C. Section 145(b)).

COUNT THREE

The Grand Jury further charges:

That on or about the 15th day of March, 1952, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the

calendar year 1951 by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,159.40, that he was entitled to exemptions for "Acy Jr." and "William" as children with 1951 gross incomes of less than $600, who received one-half of their support from him in 1951, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,759.40, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not children with 1951 gross incomes of less than $600, who received more than one-half of their support from him in 1951, and the amount of income tax due to the United States on said return was $488.50.

(Title 26, U. S. C. Section 145(b)).

COUNT FOUR

The Grand Jury further charges:

That on or about the 15th day of June, 1953, in the Southern District of New York, Acy Lennon, the defendant herein, who during the calendar year 1952 was married, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952, by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year

was the sum of $2,657.63, that they were entitled to exemptions for "Acy Jr." and "William" as children with 1952 gross incomes of less than $600. who received more than one-half of their support from the said Acy Lennon and his said wife in 1952, and that there was no tax due and owing on said return, whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $4,157.63, they were not entitled to claim the said "Acy Jr." and "William" as exemptions in that the said "Acy Jr." and "William" were not children with 1952 gross incomes of less than $600. who received more than one-half of their support from them in 1952, and the amount of income tax due to the United States of America on said return was $390.19.

(Title 26 U. S. C. Section 145(b)).

PAUL W. WILLIAMS
United States Attorney

BENJAMIN J. BUTTENWEISER
Foreman

Indictments Nos. C 148-204 and C 150-247 as Consolidated by Order of Hon. Edmund L. Palmieri, U. S. D. J., Dated August 21, 1956

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

COUNT I (C 148-204)

The Grand Jury charges:

That on or about 15th day of March, 1950, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1949 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,091.25, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,691.25, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $388.39.

(Title 26 U. S. C. Section 145(b)).

Consolidated Indictments Nos. C 148-204 and C 150-247

COUNT TWO (C 150-247)

The Grand Jury further charges:

That on or about the 13th day of June, 1951, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1950 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,586.20, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $5,286.20, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $525.41.

(Title 26 U. S. C. Section 145(b)).

COUNT THREE (C 150-247)

The Grand Jury further charges:

That on or about the 15th day of March, 1952, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the

calendar year 1951 by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,159.40, that he was entitled to exemptions for "Acy Jr." and "William" as children with 1951 gross incomes of less than $600, who received one-half of their support from him in 1951, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,759.40, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not children with 1951 gross incomes of less than $600, who received more than one-half of their support from him in 1951, and the amount of income tax due to the United States on said return was $488.50.

(Title 26, U. S. C. Section 145(b)).

COUNT FOUR (C 150-247)

The Grand Jury further charges:

That on or about the 15th day of June, 1953, in the Southern District of New York, Acy Lennon, the defendant herein, who during the calendar year 1952 was married, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952, by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of $2,657.63, that they were entitled to ex-

emptions for "Acy Jr." and "William" as children with 1952 gross incomes of less than $600, who received more than one-half of their support from the said Acy Lennon and his said wife in 1952, and that there was no tax due and owing on said return; whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $4,157.63, they were not entitled to claim the said "Acy Jr." and "William" as exemptions in that the said "Acy Jr." and "William" were not children with 1952 gross incomes of less than $600, who received more than one-half of their support from them in 1952, and the amount of income tax due to the United States of America on said return was $330.19.

(Title 26 U. S. C. Section 145(b)).

* * * * *

PAUL W. WILLIAMS
United States Attorney

Bill of Particulars No. 148-201

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

United States of America, for its Bill of Particulars, by Paul W. Williams, United States Attorney for the Southern District of New York, alleges as follows:

1. The sum of $4,691.25 set forth in Count One of the Indictment as being defendant's net income for the year 1949 is arrived at as follows:

Net Income reported on return	$3,091.25
Items of Income unreported on return:	
3/18/49	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,691.25

2. The sum of $5,286.20 set forth in Count Two of the Indictment as being defendant's net income for the year 1950 is arrived at as follows:

Net Income reported on return	$3,586.20
Items of Income unreported on return:	
3/16/50	
Payment for services rendered in preparing income tax returns	1,600.00

Bill of Particulars No. 148-204

3/24/50	
Payment for services rendered in preparing income tax returns	100.00
	$5,286.20

3. The sum of $4,759.40 set forth in Count Three of the Indictment as being defendant's net income for the year 1951 is arrived at as follows:

Net Income reported on return	$3,159.40
Item of Income unreported on return:	
March 1951 (Specific date not known)	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,759.40

4. The sum of $4,157.63 set forth in Count Four of the Indictment as being defendant's net income for the year 1952 is arrived at as follows:

Net Income reported on return	$2,657.63
Item of Income unreported on return:	
7/8/52	
Commissions on sale of apartments	1,500.00
	$4,157.63

* * * * *

6. The only entries on the defendant's tax returns which the United States of America claims to be wilfully false are as follows:

Bill of Particulars No. 148-204

(a) Those entries claiming exemptions to which he was not entitled, as set forth in the Indictment.

(b) Those entries dealing with the computation of tax, in that defendant, having wilfully failed to report the items of income set forth in this Bill of Particulars and having wilfully claimed false exemptions as set forth in the Indictment, knew that the amount of tax computed was not the amount that was actually due and owing.

Dated: New York, N. Y.
December 6, 1955

.....

PAUL W. WILLIAMS
United States Attorney for the Southern
District of New York
Attorney for United States of America

By .....

THOMAS A. BOLAN
Assistant U. S. Attorney
Office & P. O. Address:
United States Courthouse
Foley Square, New York, N. Y.

Bill of Particulars No. 150-247

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

United States of America, for its Bill of Particulars, by Paul W. Williams, United States Attorney for the Southern District of New York, alleges as follows:

1. The sum of $4,691.25 set forth in Count One of the Indictment as being defendant's net income for the year 1949 is arrived at as follows:

Net Income reported on return	$3,091.25
Item of Income unreported on return:	
3/18/49	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,691.25

2. The sum of $5,286.20 set forth in Count Two of the Indictment as being defendant's net income for the year 1950 is arrived at as follows:

Net Income reported on return	$3,586.20
Items of Income unreported on return:	
3/16/50	
Payment for services rendered in preparing income tax returns	1,600.00

Bill of Particulars No. 150-247

3/24/50	
Payment for services rendered in preparing income tax returns	100.00
	$5,286.20

3. The sum of $4,759.40 set forth in Count Three of the Indictment as being defendant's net income for the year 1951 is arrived at as follows:

Net Income reported on return	$3,159.40
Item of Income unreported on return:	
March 1951 (Specific date not known)	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,759.40

4. The sum of $4,157.63 set forth in Count Four of the Indictment as being defendant's net income for the year 1952 is arrived at as follows:

Net Income reported on return	$2,657.63
Item of Income unreported on return:	
7/8/52	
Commissions on sale of apartments	1,500.00
	$4,157.63

7. The only entries on the defendant's tax returns which the United States of America claims to be wilfully false are as follows:

Bill of Particulars No. 150-247

(a) Those entries claiming exemptions to which he was not entitled, as set forth in the Indictment.

(b) Those entries dealing with the computation of tax, in that defendant, having wilfully failed to report the items of income set forth in this Bill of Particulars and having wilfully claimed false exemptions as set forth in the Indictment, knew that the amount of tax computed was not the amount that was actually due and owing.

Dated: New York, N. Y.
July 2, 1956

.....

PAUL W. WILLIAMS
United States Attorney for the Southern
District of New York
Attorney for United States of America

THOMAS A. BOLAN
Assistant U. S. Attorney
Office & P. O. Address:
United States Courthouse
Foley Square, New York, N. Y.

Excerpts From Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C. 148-204
C. 150-247

—o—

[SAME TITLE]

—o—

Before: HON. ARCHIE O. DAWSON,
District Judge.

New York, October 4, 1956
2:00 o'clock p.m.

APPEARANCES:

PAUL W. WILLIAMS, ESQ., United States Attorney, for the Government; By Thomas A. Bolan, Esq., Assistant United States Attorney.

LEONARD FELDMAN, ESQ., Attorney for Defendant; Charles C. Cohen, Esq., of Counsel.

(A jury was duly empaneled and sworn.)
(Three alternate jurors were duly empaneled and sworn.)
(Adjourned to October 5, 1956, at 10:30 a.m.)

1A New York, October 5, 1956.
10:15 o'clock a.m.

Colloquy

TRIAL RESUMED

(The following proceedings took place in the robing room:)

The Court: In the absence of the jury, Mr. Feldman, I understand that you have a motion to make.

Mr. Feldman: I do, your Honor.

The Court: Yes?

Mr. Feldman: Your Honor, the indictment consists of six counts, and each count relates to a particular year and without exception each count is made up of a number of items.

To illustrate that, your Honor, so that you may follow the motion which I am about to make, you will note that in the first count, the very first count——

Mr. Bolan: Pardon me for interrupting, but just to make one thing clear, there are actually two indictments here, your Honor, and they have been con- (1B) solidated.

Mr. Feldman: There has been consolidation of the two indictments, but please let me make my motion first.

The Court: All right. Let him make his motion.

Mr. Feldman: And then you can say whatever you want later on when I am through.

Now, going to the first count, your Honor, you will notice that——

Mr. Bolan: Which indictment is this? I am sorry, Mr. Feldman, but there are two indictments, and you will admit that, so that I don't know which one you are referring to.

Mr. Feldman: Which indictment is on trial?

Mr. Bolan: There are two indictments on trial.

Mr. Feldman: Two indictments on trial?

The Court: I have before me Indictment No. C. 148-204 and Indictment No. C. 150-247 as consolidated by order of Judge Palmieri dated August 21, 1956.

Mr. Feldman: Correct, your Honor, as to the consolidation and now the one indictment which is now before you, consisting of six counts.

(10) The Court: And you are referring to Count 1 in Indictment which was originally C. 148-204?

Mr. Feldman: Correct.

The Court: All right. What is your point?

Mr. Feldman: You will notice that there are two items in that count and the first two items relate to dependencies and to an alleged understatement of net income.

Now, it is quite conceivable, your Honor, and as we believe will happen here, one or both of these two items in the first count may not be submitted to the jury depending, of course, upon the proof adduced by the Government, but taking all of the counts now, and I am addressing myself now to all of them, the only reason I have pointed out these two items is that both items are actually independent items for which there would have to be independent proof.

I would point out to the Court that the indictment is defective on its face. The Court will note that the indictment allegedly stems from a violation of 145(b) of the 1939 Code, and in order for a 145(b) indictment to issue or to be effective there must be of necessity a tax deficiency, and if there is no tax deficiency, there can be no conviction, or (11) for that matter can there be an indictment under 145(b).

The Court: Do you claim that this has to do with a tax deficiency?

Mr. Feldman: Yes.

Now, the indictment so far as its counts relate to dependencies which comprise the years 1949 to 1952 inclusive, it alleges certain facts in the negative, the fact that the defendant alleged that there were two dependencies shown on the return, and that the defendant then and there well

knew that he was not entitled to claim the said dependents, thereby limiting his exemptions in that he was not entitled to claim them in the dependent sense.

Now, as to this statement alone, and I am limiting myself to this point in the immediate question, although my motion has a scope far greater than the issue of dependency, but that statement alone does not allege a crime under 145(b) because first it does not allege any contention by the Government as to the number of exemptions to which the defendant was in fact entitled as compared to the number of exemptions which he actually took; second, there is nothing set forth as to the tax which the Government claims to be (1E) due which is based in whole or in part on any number of improper exemptions, and I use the word "exemptions" here, your Honor, as distinct from dependencies, because a tax credit under the 1939 Code follows a number of exemptions to which a taxpayer is entitled, not to the number of dependents which he necessarily may have taken; third, it is impossible, your Honor, to read the indictment and determine from that reading that the defendant took more exemptions than he was in fact entitled to, because the indictment is completely silent as to the number of exemptions to which he was actually entitled.

As a matter of fact, in reading the Government's bill of particulars, which is an amplification of the indictment, you will note that the Government concedes correctness in the entire return and claims only the false identification of dependents and the amount of overstatement of income, but at this moment I am limiting myself to this issue of dependents, and nowhere in the bill of particulars or in the indictment is any statement made that the number of exemptions to which the defendant was entitled was a lesser number than that which he actually took in the return, and in order to illustrate that, your Honor, if in (1F) fact the

number of exemptions to which the defendant was entitled was correctly taken, then regardless of the identity of those exemptions there could be no indictment under 145(b) because on this point alone and ignoring for the moment the alleged understatement of income, there can be no tax deficiency.

Now, concerning 145(b) mere error or falsity in the identity of the exemption is not a crime under that particular section, if as a result of such falsity there is no change in tax liability.

Thus, if, in fact, the defendant was not entitled to the sons whom he took but there were any other exemptions to which he was in fact entitled so that the number of exemptions actually taken are the correct number of exemptions, there would be no tax deficiency and the indictment could not issue, or, having issued, could not stand.

The Court: The indictment says on its face that there was a tax deficiency. It gives this as apparently one of the bases on which the Government alleges that there was a tax deficiency.

Mr. Feldman: Your Honor, I point out to the Court that the statement of tax deficiency per se is considered as mere surplusage by the Court. The crime (1G) under 145(b) is the attempt to evade taxes.

The Court: And the indictment so alleges. It alleges an attempt to evade taxes and that there was a tax deficiency as a result of that wilful act. It gives two instances which resulted; one was an understatement of income, two, an improper claim of exemptions.

Mr. Feldman: Right. Now, had the indictment limited itself, your Honor, for the particular years to the statement which you made before that, that is, before the explanatory part, there could be no attack on the indictment because the indictment would be then said to allege a crime.

The Court: You say the indictment puts in too much information?

Mr. Feldman: No, the indictment as such, your Honor, the information which it puts in might of necessity be considered surplusage, but the bill of particulars controls.

The Court: I am looking merely at the face of the indictment.

Mr. Feldman: Your Honor, on a motion of this type the indictment may be read together with the bill of particulars to determine, because the bill (1H) of particulars is considered in amplification of the indictment.

May I make a respectful suggestion to the Court?

In view of the fact that there has been an understanding that there will be a decision reserved and briefs submitted at a later point, the arguments which suggest themselves to the Court may perhaps be better disposed of after those briefs are submitted and the Court has had a chance to study them.

The Court: I want to look at this bill of particulars.

Mr. Feldman: All right.

The Court: Where is the bill of particulars?

Mr. Feldman: So that I can aid the Court, I have a copy here.

The Court: Let me look at your copy of the bill of particulars.

Mr. Feldman: May I direct the Court's attention to the statement—I think you will find it at the bottom of the third page, second page.

The Court: All right, I have looked at the bill of particulars. Is that the same point that you have reference to or——

(1I) Mr. Feldman: The dependency language is repeated throughout the counts in which the dependency items refer.

The Court: All right.

Mr. Feldman: Now, the fatal defect which the defendant claims to appear on the face of the indictment as amplified by the bill is there is no allegation by the Government as to the number of exemptions to which the defendant was in fact entitled. As a matter of fact, the bill of particulars, limiting itself, as it does, set up the number of exemptions taken by the defendant on his return.

Now, this is not, your Honor, a mere technicality, an omission which can be read into the indictment or supplied, because the very heart of the indictment is illustrated by the Government's own analysis of its case in the statement appearing in the bill of particulars that the only entries on the defendant's tax return which the United States of America claims to be wilfully false are as follows:

"A. Those entries claiming exemptions to which he was not entitled as set forth in the indictment."

If we are to accept the Government's position (1J) as being a straightforward position and a position stated with candor and honesty, then we must of necessity assume that the Government is claiming falsity merely in identity and not making any commitment or committing statement as to the number of exemptions to which the defendant was in fact entitled. And without such a statement or claim the indictment on its face must fall, because the only thing which determines tax liability is the number of exemptions to which a particular defendant may or may not be entitled. And the identity of them for the purpose of an indictment under 145(b) is really immaterial.

Now, your Honor, there is another fatal defect in the indictment in that the indictment is based, and you can see that, your Honor, in the first count on so-called net income, an understatement of net income.

Colloquy

Now, I would point out to the Court that nowhere in the 1939 Code nor in the 1954 Code is there any provision with regard to the tax to be paid on net income as such. Section 11 and Section 12 of the Code—certainly of the 1939 Code, there was a slight change in the year 1954 Code, referred to two items of tax, the so-called normal tax and the so-called surtax. (JK) Now normal tax, which in this particular situation is actually an anomalous situation, is three percent of the amount of net income in excess of credit against net income provided in Section 25. Section 25 includes, incidentally, your Honor, the dependency credits, and these credits include these items such as dependency and certain interest income. As the Court can very readily see, the indictment speaks only of net income. Net income is specifically defined in Section 21(a) as follows: "Net income means the gross income computed under Section 22, less the deductions allowed by Section 23." It does not cover any exemptions or credits under Section 25 which an individual is entitled to before any tax may be imposed. Now, it follows that when the indictment speaks of net income it is speaking of a tax concept which does not exist in the Code. And speaking of that tax concept in that manner, your Honor, this being a criminal indictment, the indictment and the law as such must be strictly construed, and this part about net income and the smaller tax means the smaller part. The greatest part of the tax is under the 1939 Code, in that situation comes about under the surtax section. Section 22(b) the tax for each taxable year upon the so-called surtax net income. Section 12(a) (JK) defines surtax net income as the amount of the net income in excess of the credits against net income provided in Section 25(b). The total tax due was a combination of the two.

Colloquy

The Court can readily see that net income alone will not establish the tax to be paid by a taxpayer no matter how incorrect it may be. The determination of tax liability is the existence of the amount of normal tax net income and surtax net income, and before the Government can sustain an indictment, that indictment must set forth that the normal tax net income and the surtax net income reported by the taxpayer in his return is erroneous. And to use merely the words "net income" would be as erroneous as to use the words "gross income" because the plain fact of the matter is that under the tax law there is absolutely no tax on net income any more than there is tax on gross income, and the failure to provide the correct return with regard to net income does not establish in and of itself any tax deficiency.

Now there is another point. The Court will note, as I pointed out before, that the indictment on its face is phrased in the negative, namely, that he was not entitled to claim the said Acy, Jr. and William as exemptions in that they were not dependent sons. Here, your Honor, we come across a problem.

(1M) The problem that we come across is this. The word "dependent" modifies the word "sons." It is in the adjectival description of the sentence. In other words, as I read this indictment, the Government concedes that there are sons but that in fact these sons were not dependents, but even if they were to prove this, your Honor, this in itself wouldn't establish any tax deficiency because we come right back to the issue of the number of exemptions to which the defendant was in fact entitled and which number the Government makes no statement about in its indictment and which in its bill of particulars it concedes.

I point something else out to your Honor at this time with regard to this motion and that is that there is a

statute of limitations question here. There has been much written in recent years, I daresay in the last two or three years, on this question of 3616(a) as compared to 145(b), and I think the Court is very well aware of the Moran case, the Allied Stevedoring, American Stevedoring case and so on. We are too.

However, in the motion that we make now we seriously make, because havin read the briefs in all those cases——

The Court: What more do you say on that? Why (4N) are they barred by the statute of limitations?

Mr. Feldman: We are saying that for the years 1949 through the year 1952 inclusive are barred by 3616(a).

The Court: On what basis?

Mr. Feldman: We are saying it on this basis, your Honor, that the only allegation in this indictment, your Honor, is the fact that the defendant filed a false return.

The Court: What is the statute of limitations on that?

Mr. Feldman: Three years, under 3616(a). Except for the 1954 Code—it is still three years, but they changed the language of 3616.

At this hour I would like to leave it at this point—I made a commitment to the Court that I wouldn't argue at all and that I would simply put my motion on the record and that I would argue it in my brief at a later point. I would like to keep to the commitment, your Honor.

The Court: Well, I deny your motion to dismiss the indictment on the face of the indictment. I don't think any of the points that you have made there are sufficient to dismiss the indictment on the face of (10) the indictment. The indictment clearly states what the charge is, sufficient to advise the defendant of it, and if in fact he was entitled to dependents, that he misnamed the dependents or something like that, why, of course that is pertinent ground for proof at the trial and will be taken into account at the trial.

On the question of the statute of limitations, if there is anything to that, of course I will be glad to receive a brief.

Mr. Feldman: May I make a suggestion to the Court, and in doing so I do not intend to impose upon you. I would suggest to the Court that rather than deny it now, we have searched these cases thoroughly and very extensively——

The Court: You mean on the——

Mr. Feldman: On the dependency question.

The Court: No. I deny your motion.

Mr. Feldman: May I make the suggestion to your Honor that the denial at this point accomplishes nothing, as far as the trial is concerned. I would suggest that you reserve decision on that for this reason, your Honor: so far as we have been able to determine, and we have even gone through the files in this court and conducted a search and this has been the only trial that we have (1P) been able to find in which the dependency issue is involved as a matter of proof. There have been a number of dependency cases where there have been pleas. There have been none, so far as we know, that were tried.

Mr. Bolan: The Dodson case.

Mr. Feldman: In the Dodson case the woman admitted to the grand jury that she had taken dependents but the issue was whether or not she had done it wilfully.

The Court: And the issue in this case is whether or not this defendant has wilfully sought to evade taxes by claiming certain people as dependents. That is one of the issues.

Mr. Feldman: That is right, your Honor.

The Court: That is one of the issues, on the face of the indictment it is one of the issues. Now if in fact he made a mistake and he named one dependent when he is entitled to another or something like that, why, then there is no wilful intent to evade taxes.

Mr. Feldman: That is not the issue at all, your Honor. In view of the hour and in view of the fact that we shouldn't argue the motion at this point, I would make the recommendation that I do because I make it quite seriously —I am not standing here before a jury trying to influence them in their thinking——

(1Q) The Court: No. I am going to deny the motion. I think that the case can go ahead.

Mr. Feldman: Your Honor, why don't you reserve decision?

The Court: I don't want to have unfinished business around.

Mr. Feldman: It won't be unfinished because I am only going to renew the motion.

The Court: You can renew the motion at the end of the Government's case of course, but so far as this indictment alleges something on its face, I think it is sufficient; whether the Government has enough proof or anything like that is another matter.

I deny your motion to dismiss the indictment on the face of the indictment. You have an exception.

* * * * *

(63) JOSEPH E. FORD, called as a witness on behalf of the Government;

* * * * *

(69) Q. When did you first meet Mr. Lennon? A. Approximately 1939 or '40, maybe before.

Q. Now, did there come a time when you employed Mr. Lennon in your tax service at the Abyssinian Baptist Church? A. That is right, sir.

Q. Now, before we go into that, sir, what sort of a tax service was this, what did you do? A. Income tax.

Q. You prepared tax returns for clients that came to you, is that right? (70) A. That is right.

Q. You say there came a time when you did employ Mr. Lennon to work for you in the tax service, is that right? A. That is right, sir.

Q. Do you recall when that was? A. Approximately 1951.

Q. 1951? A. '41, I am sorry.

Q. How long did he continue in your employ? A. Until I left, 1951.

Q. What sort of services did Mr. Lennon perform as your employee? A. He was an interviewer and bookkeeper.

Q. When you say he was an interviewer, what do you mean by that? A. He interviewed the clients as they came in, got information from them.

The Court: What would you be doing for these clients? Who were these clients? What did you do for them in this?

The Witness: Make out their tax returns.

The Court: People would come to you and want you to make out their tax returns for them?

The Witness: That is right, sir.

(71) The Court: They provided you with data and information and you would do the work of preparing the return, is that right?

The Witness: That is right.

The Court: And then did you get any fees for doing that?

The Witness: I did, sir.

Q. Now, did Mr. Lennon prepare any tax returns himself? A. No, he did not.

Q. You were the one who prepared the return, is that right? A. I did.

Q. You had mentioned that he acted as your bookkeeper. What did he do in that function? A. He collected the fees, he kept the books.

Q. Now, did you pay Mr. Lennon for his services? A. I did.

Q. Did you have any set figure that you paid him each year? A. I did not.

Q. How was the amount paid arrived at? A. According to the amount that I took in.

Q. Now, did you pay Mr. Lennon by check or by cash? A. I paid Mr. Lennon by check every year but one.

(Government's Exhibits 7, 8, 9 and 10 marked for identification.)

(72) Q. Mr. Ford, I show you Government's Exhibit 9 for identification and ask that you carefully examine it and state whether you are able to identify the document. A. Yes.

Q. What is that? A. This is a check in payment for service rendered.

Mr. Feldman: I object to that, if your Honor please, reading from a document not in evidence.

The Court: I did not ask what the document said. He was asked what the document was. Your objection is overruled.

What is the document?

Q. What is it? A. It is a check in payment to Mr. Lennon for service——

Mr. Feldman: Your Honor, that is what I object to. It is a check, canceled check or uncanceled check.

The Court: Overruled.

Q. For what year is that? A. This is for 1949.

Mr. Feldman: Exception, your Honor.

Q. Do you know how much you paid Mr. Lennon for his services for the year 1949? A. $1600.

(73) Q. Now, is this the check that you paid Mr. Lennon for his services? A. That is right.

The Court: Who is the check payable to?

The Witness: Mr. Lennon, Acy Lennon.

The Court: What is the date of the check?

The Witness: March 18, 1949.

Mr. Bolan: I offer this in evidence, your Honor.

The Court: Any objection?

Mr. Feldman: Certainly, your Honor. The witness has testified that this is the check——

The Court: Do you object to it?

Mr. Feldman: I do.

The Court: On what basis?

Mr. Feldman: The witness has testified that this is a check which he gave to Mr. Lennon, but the back of the check quite clearly shows——

Mr. Bolan: Your Honor, I object.

The Court: No. What is the basis of your objection? If he says he gave that check to Mr. Lennon why isn't it relevant? You can cross-examine him and make any argument about it. But why isn't it relevant?

Mr. Feldman: Because, your Honor, I think (74) that it would be prejudicial—may I see the Court at the bench? I don't like to make this——

The Court: No.

Mr. Feldman: I can explain the objection a little better there and then perhaps save the Court's time, because there are other checks that will come in.

The Court: Is it your objection that it is irrelevant?

Mr. Feldman: Irrelevant, your Honor.

The Court: Let me look at it.

Mr. Feldman: And I draw the Court's attention to the back of the check.

The Court: Objection overruled. The check will be received in evidence.

We have now approached adjournment time. We will adjourn until 2 o'clock this afternoon.

Don't discuss the case, ladies and gentlemen.

(Government's Exhibit 9 for identification received in evidence.)

Mr. Feldman: Your Honor will note my exception.

(Recess until 2 p.m.)

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(75) AFTERNOON SESSION

JOSEPH E. FORD, resumed.

The Court: You may proceed.

Direct Examination Continued by Mr. Bolan:

Q. Mr. Ford, you testified this morning, did you not, that you paid Mr. Lennon $1600 by check for his services for the year 1949? A. That is right, sir.

Q. And did you pay Mr. Lennon for services rendered for the year 1950? A. I did, sir.

Q. And did you pay him by cash or by check? A. By check.

Q. I show you Government's Exhibit 10 for identification and ask you if you recognize these documents. A. Yes, I do.

Q. What are they? A. These are for services rendered by Mr. Lennon to me.

Mr. Feldman: Same objection, your Honor, and I ask that the answer be stricken. It is either a check or is not.

The Court: As I understand the witness's answer, he says this is what he gave Mr. Lennon in payment for his services. The objection is overruled.

(76) You may cross-examine him, of course, on it.

Q. These two checks are checks that you paid Mr. Lennon for his services rendered to you in 1950, is that correct? A. That is correct.

Mr. Bolan: I offer these checks in evidence, your Honor.

The Court: Any objection?

Mr. Feldman: May I see them, your Honor? Until I see them, I don't know.

(Mr. Bolan hands checks to Mr. Feldman.)

Mr. Feldman: Your Honor, same objection, in view of the endorsements on the back, as these are not probative or competent or relevant as showing payment by the witness.

The Court: The objection is overruled.

Mr. Feldman: Exception.

Your Honor, may I see these for a moment again, please?

Mr. Bolan: Yes (handing to Mr. Feldman).

(Government's Exhibit 10 for identification received in evidence.)

The Court: Go ahead, Mr. Bolan.

Q. Mr. Ford, did Mr. Lennon cash these checks, (77) the three checks which you described in your testimony?

Mr. Feldman: Objection, if your Honor please. May we now, in view of the fact that Mr. Ford is a Government witness, may we have a cessation of leading questions to the witness?

The Court: You gave those checks to Mr. Lennon, did you?

The Witness: Yes, your Honor.

The Court: Were they cashed?

The Witness: They were cashed.

The Court: All right.

Mr. Feldman: May I see them again for a moment, Mr. Bolan, please?

Mr. Bolan: Yes (handing to Mr. Feldman).

The Court: Next question, Mr. Bolan.

Q. Mr. Ford, I call your attention to the fact that on Government Exhibit 9, which is a check dated March 18, 1949, under what appears to be a signature Acy Lennon appears the signature which appears to be Joseph E. Ford, and that also on one of the checks that is a part of Government Exhibit 10, the check dated March 16, 1950, there appears the same situation, the signature appearing as Acy Lennon and under that Joseph E. Ford. Are you able to (78) explain, first of all, is that your signature on there? A. That is my signature, yes, sir.

Q. And do you know if that is Mr. Lennon's signature on each of these checks? A. That is Mr. Lennon's signature.

Q. Will you state why it is that your signature appears on those checks?

Mr. Feldman: Objected to, if your Honor please. It is there.

The Court: State the circumstances under which you placed your signature on these checks. I will allow that question.

Q. State the circumstances, Mr. Ford, surrounding the placing— A. That check is for $1600. Mr. Lennon had no account in my bank. I went with him to the bank with the check to cash the check. The teller requested me to sign underneath.

Q. That is so for the check in the amount of $1600 dated March 18, 1949, and for the check dated March 16, 1950, in the amount of $1600? A. That is right.

The Court: Did you see the cash then delivered to him?

(79) The Witness: I stood at the window with him.

The Court: Did you see the cash——

The Witness: I saw the cash.

Mr. Bolan: I would just like to read Government's Exhibit 10 to the jury, your Honor.

Government's Exhibit 10 consists of two checks, one dated March 16, 1950, payable to Acy Lennon in the amount of $1600, signed by Joseph E. Ford.

The other check is dated March 24, 1950, payable to Acy Leannon in the amount of $100 and signed by Joseph E. Ford.

The Court: And the reverse side, since you are reading it.

Mr. Bolan: The endorsements we have on Government's Exhibit 9, the March 18th check, 1949, the signatures reading Acy Lennon and Joseph E. Ford, and on the check for $1600 dated March 16, 1950, we——

have the same two signatures, Acy Lennon and Joseph E. Ford; for the $100 check dated March 24, 1950, we have the signature in writing Acy Lennon and underneath that in printing Acy Lennon and Early Lennon, 2364 Seventh Avenue, New York City.

Q. Now, Mr. Ford, did you pay Mr. Lennon for (80) services rendered you in your tax service for the year 1951? A. I did.

Q. Did you pay him by check or by cash? A. By cash.

Q. How much did you pay him? A. $1600.

Q. Is there anything which fixes the payment of that cash definitely in your mind? A. There is.

Q. Will you state what it is, please? A. I had had some domestic trouble. Mr. Lennon took care of all my cash during the day and each night he would turn the cash over to me. I took the cash home. I would take the cash home and would hide it to keep my wife from getting to it.

I awoke one night and found my wife had found out, my wife had found the hiding place and she was taking money out.

I found a new hiding place and it was in a large lamp, four-way lamp. I put the money in the lamp.

Sometime during the morning, 5 or 6 o'clock in the morning, the laundryman came. When he rang the bell I made the light in my room.

(81) My wife got up out of her bed, went to the door, took the laundry in and gave out the dirty laundry.

I left my light burning, went back to sleep. I awoke with the room full of smoke and I knew my money was on fire.

I gathered up the money, put it in a newspaper and took it to my bank the next morning. My bank gave me all new money for it, cash. I had that cash and I asked Mr. Len-

non, when it came time to pay him, I said, "Mr. Lennon, do you want cash or do you want a check?"

He said, "I will take the cash," and I gave him the cash.

Q. You gave him $1600, is that right? A. That is right.

* * * * * *

(85) Q. Now, during the period from 1941 to 1951, when Mr. Lennon worked for you during income tax time, did you come in contact—how frequently did you come in contact with him? A. Almost daily.

(86) Q. Was there any particular reason why you came in contact with him daily? A. Mr. Lennon had another job in the church as recreational worker and I had my office there.

Q. You had your office in the same premises, is that right? A. The same.

Q. Was Mr. Lennon a friend of yours during this time? A. He was.

Q. What sort of friend? How would you describe him? A. I took him as my right-hand man. And he was right-hand man to the congressman.

Q. During this period of time did Mr. Lennon ever mention to you that he had any sons?

Mr. Feldman: Your Honor, I am going to object. And this is again the same sort of leading.

The Court: I will overrule that objection. Go ahead. Answer the question.

A. No, he did not.

Q. Has he ever mentioned to you that he had any sons? A. No, he has not.

Q. Now, during this period of time did you know Mrs. Lennon? A. Yes, I did.

Q. That is the wife of the defendant Lennon I am referring to? A. Yes.

(87) Q. Did you have any contact with Mrs. Lennon—what sort of contact did you have with Mrs. Lennon? A. Well, she worked in my political organization as an inspector of elections.

Q. How frequently would you see her? A. I saw her at least once or twice a week.

Q. Did she ever mention having any sons?

Mr. Feldman: Your Honor, the same objection.

The Court: Overruled.

A. No, she did not.

Mr. Feldman: Your Honor, may my exceptions be noted, without troubling to keep mouthing exceptions after each ruling by the Court?

The Court: Yes, sure.

Q. Did you ever visit the defendant's home? A. Yes, I have.

Q. Where was that home during the period 1941 to 1951? A. It was on Seventh Avenue, between 133rd and 134th Street, in Manhattan.

Q. How frequently did you visit the home? A. Once or twice a year.

Q. Was any mention ever made in that home of any sons of the defendant, or did you see any sons (88) in the home?

Mr. Feldman: Objected to, your Honor.

The Court: Overruled.

Q. Would you answer that question? A. What was the question?

Q. The question was—I will break it down into two questions.

Was there any mention made during your visits to the Lennon home of any sons of theirs? A. I didn't hear it.

Q. Did you see anybody who was referred to as a son of the Lennons? A. No, I did not.

* * * * * *

(91) Q. Do you recall what your net profit was for 1949? A. No, I don't.

Q. Approximately do you recall? A. Between 500 and 2,500.

Q. And that was so for the other two years, 1950 and 1951, is that correct? A. That is correct.

Q. Well, now, I take it that in at least one of those years the defendant Lennon made more out of the tax service than you did as the person who was in charge of the tax service, is that correct?

Mr. Feldman: Objected to, your Honor, as leading and calling for a conclusion.

The Court: I will sustain the objection to the question as leading. Just bring out the facts, Mr. Bolan.

(92) Mr. Bolan: All right.

The Court: Let the conclusions speak for themselves.

Mr. Bolan: All right.

Q. Did Mr. Lennon ever make during any one of those three years more from the tax service than you did? A. He did so for one or two years.

Q. Was there any particular reason why Mr. Lennon did make more than you did in any one year?

Mr. Feldman: Your Honor, I object as completely irrelevant.

The Court: Overruled.

A. Congressman Powell wanted me to take care of Mr. Lennon, the righthand man, and I wanted to see Lennon happy because he had a family.

Q. Did you have any other employees? A. I had other employees.

The Court: What family did Mr. Lennon have, as far as you know?

The Witness: As far as I know he had two daughters and a wife.

The Court: Two daughters and a wife?

The Witness: Yes.

(93) Mr. Bolan: I have no further questions at this time, your Honor.

The Court: You may cross-examine.

Mr. Feldman: May I take just a moment, your Honor?

The Foreman: Could we have an explanation of what the defense attorney means when he speaks of "exception," and what effect it would have on us?

The Court: Yes, I will be glad to explain that. It has no effect on the jury at all. When the attorney makes a point and I overrule it, he can say, "exception," which is simply an indication that he thinks he wants to preserve that as a basis for appeal. I mean the word "exception" means that the lawyer thinks the judge is wrong and if the case goes to the higher courts, of course, it is one of the things that he can argue in the higher courts, that is all. It is an indication in the record that it is something that

he excepts to, and that he thinks it is a ground for an appeal. That is all it means. It has no effect on the jury at all. Needless to say, as far as the jury is concerned, the Judge is right no matter how he rules. If I am wrong I will be corrected by (94) the Court of Appeals or the United States Supreme Court, but for the purposes of this trial I am right, and I have not been corrected as yet in any of my cases.

Mr. Feldman: With the Court's permission may I be excused for just one moment?

The Court: Yes.

The Court: Yes.

Cross-Examination by Mr. Feldman:

Q. Mr. Ford, I noticed that your recollection as to the net profits that you made from your tax service during the years 1949, '50 and '51 was not too precise. Can you give us, for instance, as to the year 1949, can you tell us exactly what your net profit was? A. No, I can't.

Q. Now, could you tell us what your net profit was in 1950? A. I am sorry, I can't.

Q. Could you tell it to us for 1951? A. I can tell you that it was approximately between 500 and 2,500.

Q. Right. And you made, as I understand it, between eight and $10,000 a year gross? A. Gross.

(95) Q. But at this moment testifying now do you recall whether it was 8,000, 8,500, 9,000, or what it was? A. No, I don't.

Q. For 1950? A. I am sorry, I don't.

Q. Would your answer be the same for the years 1949, 1950 and '51? A. It would be.

Q. It would be the same, would it not? A. Yes.

Q. However, you are an accountant, are you not? A. I am.

Q. And you have been an accountant for many years? A. That's right.

Q. And you kept records of your earnings? A. Yes, I did.

Q. And you kept records of your expenses? A. Yes, I did.

Q. And I presume that during the years 1949, '50 and '51 you filed income tax returns for those years? A. I did.

(96) Q. And in filing those income tax returns, Mr. Ford, did you take into account the earnings from your tax service? A. I did.

Q. And all your other earnings? A. I did.

Q. And did you take into account your expenses in running the tax service? A. Yes, I did.

Q. And did you take into account all of your other expenses? A. Yes, sir.

Q. And would your answers be the same for the years 1950 and '51? A. That's right, sir.

Q. So that actually——

Mr. Feldman: I will withdraw that.

Q. Let me ask you this, Mr. Ford:

If you had your income tax returns before you could tell us what your actual earnings were and what your actual expenses were? A. If I had I could.

Mr. Feldman: Will the Government be good enough to produce those income tax returns?

(97) The Court: Do you have them here?

Mr. Bolan: Your Honor, we have not been able to locate the 1950 tax return. We have been able to locate the 1949 and 1951 tax returns.

The Court: Of Mr. Ford.

Mr. Bolan: Of Mr. Ford.

The Court: What do you want to ask him about it, his gross income during that year?

Mr. Feldman: Yes, sir.

The Court: Show it to Mr. Ford and let the question be asked and see if he can refresh his recollection from those returns.

Mr. Bolan: This is 1951.

Mr. Feldman: Your Honor, May I make a suggestion, in view of the fact that 1950 is not still available but I presume it will be——

The Court: 1950?

Mr. Feldman: 1950, is that right?

Mr. Bolan: 1950 is missing, and I might point out, your Honor, that it took three days to locate the 1951 return I believe it was, and we are still looking for the 1950 return.

Mr. Feldman: In view of that, may we suspend with this line of examination for a few (38) minutes so we can have a cohesive story before the jury and go on with something else?

Mr. Bolan: Suspend with what?

Mr. Feldman: Until you produce the others.

The Court: On this line of questioning it seems to me that you may be able to develop it by one of these other returns, and then if the other return becomes necessary why, of course, you can continue your examination on that.

Q. Well, which return do you have before you, Mr. Ford? A. 1951.

Q. And who made out that return for you? A. I did.

Joseph E. Ford—for Government—Cross

Mr. Feldman: Do you have 1949, Mr. Bolan?

Mr. Bolan: Yes, I do.

Mr. Feldman: Suppose we work with that.

(Mr. Bolan hands document to Mr. Feldman.)

Mr. Feldman: May we have it marked for identification as being the document that the witness is examining, your Honor?

The Court: All right, mark it Defendant's Exhibit A for identification.

(Marked Defendant's Exhibit A for (99) identification.)

The Witness: This isn't complete.

Q. You mean there is something missing? A. There is a sheet missing here.

Q. Which sheet is missing? A. The C form.

Q. Which is the C form, Mr. Ford? A. That is where I am self-employed.

Q. You mean the statement of income from your business and so on? A. Yes.

Q. Was that form in the return when you filed it? A. Yes.

Q. How do you know? A. Because I filed it.

Q. Well, now, look at page 2 of the return. Do you know which page 2 is? A. Page 2 of the return?

Q. Yes. A. There is not anything on there.

Q. Nothing is written in? A. No.

Q. Is there something on the return?

(100) Mr. Bolan: I object.

Q. Is there any printing on page 2? A. Nothing.

Q. No printing at all? A. Nothing.

Q. Just an empty blank sheet of paper? A. That is right.

Q. With nothing on it at all? A. That is right.

Q. Is that the 1040 form by the way? A. That is right.

Q. Well, Mr. Ford, anywhere on that return is there a schedule to be filled in of income from business and expenses of business? A. That is on the C form. There should be a C form here.

Q. You mean it is a blank form? A. Yes.

Q. Will you hold it up so I can see just what you are referring to? A. There is nothing on this page, page 2.

Q. But all I asked you was if there was printing there. A. Oh, printing, sure, certainly.

(1961) Q. And is the form filled out at all, the printing on that page 2? A. No.

Q. Now, the printing on page 2 as an accountant, Mr. Ford, of how many years experience, sir? A. Beg pardon.

Q. How many years experience as an accountant? A. 34.

Q. Now, in your 34 years of experience, sir, in filling out Form 1040, for however long you filled them out, isn't that the place where you usually report your income from business? A. The Government has another form called C which I filled out and placed in here.

Q. And you say that is missing? A. It is missing.

Q. Do you have a copy of it? A. In my file home at the office.

Q. Wherever you have it? A. I don't think so. 1949, I don't think I would have.

Q. Did you make a copy of it? A. I only keep them about five years. Yes, I made a copy.

(1962) Q. And you threw it out? A. Evidently; after five years I don't keep them.

Q. Sir? A. After five years I don't keep them.

Q. You don't keep them after five years? A. Rarely.

Joseph E. Ford—for Government—Cross

Q. Now, this is the 1949 return, is that right? A. That is right.

Q. And that was filed in 1950, is that right, sir? A. That's right.

Q. And when for the first time were you interrogated by the Government concerning Mr. Lennon's affairs? A. About two weeks ago I think it was, about two weeks ago.

Q. The first time you ever told them anything about Mr. Lennon? A. Not the first time. The first time was when I was here in another matter.

Q. I didn't ask you what you were here on. A. I was questioned in the grand jury.

Q. Don't tell me that. Just answer my (103) questions, Mr. Ford, if you please.

The Court: What is your question?

Q. When for the first time were you interrogated by the Government concerning Mr. Lennon's affairs? A. About two years ago.

Q. That would be about 1954 or 1955? A. '54, I guess.

Q. '54? A. I think it was.

Q. And that was four years after you had filed the return? A. Yes.

Q. And that was within the five-year period then that you kept it, is that right? A. That is right.

Q. So that in 1954 when you were first interrogated by the Government concerning payments made by you to Mr. Lennon, you had a record of your business activities, did you not? A. That was not the question they asked.

Q. I didn't ask you what they asked, sir; I asked you whether or not in 1954 when you were first questioned by the Government you still had (104) available the record of your business activities. A. I have some form of record in my office now.

Q. Can you answer my question? Did you have that C form, a copy of the C form?

The Court: That was not the question previously asked.

Mr. Feldman: Then I apologize to the Court.

The Court: But you are asking this question now?

Mr. Feldman: Yes, sir.

Q. Did you have the C form, the copy of the C form in 1954 when you were first interrogated about Mr. Lennon by the Government? A. I don't know.

Q. Well, that was within the four-year period, wasn't it, between the time of filing and the time you were first interrogated? A. That is right.

Q. And you told us a moment ago that you keep your records for five years, is that right? A. That is right.

Q. And are you now telling us that you threw that out before the five-year period? (105) A. I don't know. I have some form of record in the office if you want to see it.

Q. Yes, will you be good enough to bring it in?

The Court: What record do you want?

Mr. Feldman: The record concerning Mr. Ford's business that would have appeared on the C form, the form that he filed.

The Court: You want to know if he got a copy of the C form, and whether it would give the information about his earnings from this tax consulting business in that year?

Mr. Feldman: That is right, and the deductions.

The Court: And any expenses.

Mr. Feldman: Yes, sir.

The Witness: I think I can answer that for you. Mr. Lennon was my bookkeeper. He kept the books and I still have those books.

Q. Where are they, sir? A. In my office.

Q. Are they available? A. They are available.

Q. And you can get them, can you not? (106) A. That is right.

Q. And are you willing to bring them in? A. That is right.

Q. Could you testify from them? A. Sure. They are Lennon's own handwriting.

Q. And if you brought those books in, sir, they would show, would they not, what you received? A. It would.

Q. And would they also show that you paid out? A. Well, I have checks, cancelled checks, showing what I paid out.

Q. But all I am asking you now is whether your books would show what you paid out. A. I don't know.

Q. Well, as an accountant, sir, did you keep a set of books for yourself showing your income and your own expenses? A. Yes, sir, I did.

Q. And where are those books? A. In my office.

Q. And are they available? A. They are.

Q. And what years do they cover? (107). A. I don't recall how far they go back.

Q. But they do go back quite a ways? A. Yes.

Q. And are they in regular ledger form, or cashbook form? A. Yes.

Q. So that by looking at those books you would be able to tell what you earned; that is, the money that you received and the money that you paid out? A. That is right.

Q. And are you willing to bring those in? A. Yes.

Q. And from those books, Mr. Ford, you can tell us, could you not, what entries you yourself made at the time the transactions were had? A. That is right.

Q. But sitting on the stand here at the moment can you recall the entires that appear in those books? A. The amounts?

Joseph E. Ford—for Government—Cross

Q. Yes, sir. A. Between eight and $10,000.

Q. But beyond that you can't go? A. No.

(108) Mr. Bolan: Your Honor, I would object to any request to bring in the books. The witness' recollection is clear that he recalls the income.

The Court: Overruled. If there is any question about it why I think he had better bring the books in, not to be turned over to the other side but so that he can have them here to refresh his recollection.

You intend to ask questions based upon those books?

Mr. Feldman: Certainly, sir.

(154) Q. May I ask you this, Mr. Ford: You have a 1949 tax return before you? A. That is right.

Q. Is that right? A. That is right.

(155) Q. And what do you show as your gross income in your 1949 return? I am afraid I asked you that before. A. $5,549.84.

Q. That was your total gross income, is that right? A. That is my net income.

Q. I asked you what was your gross income. A. I don't know what the gross is. It doesn't show here. I haven't got that sheet, but my net was $5,549.84.

Q. Can you give us any idea of your gross? A. I don't know.

Q. So the only income that you believe— A. Oh, between eight and $10,000.

Q. No, that was the gross income of your tax service, but you said you made between 500 and 2,500? A. That is right.

Q. After you paid all the expenses, is that right? A. That is right.

Q. I think you said you could not recall, but between 500 and 2,500, is that right? (156) A. That is right.

Q. The $5,000 figure was your salary from the Borough President's office, wasn't it? A. That is right.

Q. Isn't that right? A. That is right.

Q. And let me ask you you this. How much net taxable income did you show on that return? A. $5,549.84.

Q. And what tax did you pay? A. $372.

Q. Right. Now, Mr. Ford, will you be good enough to tell me this:

You had received 5,000 from the Borough President's office, is that right? A. Right.

Q. And what was the amount again, I am sorry? A. $5,549.84.

Q. $5,549.84? A. Yes.

Q. The $500 then was the difference between your Borough President's salary and the profit from your tax service? (157) A. That is right.

Q. Is that right? A. Yes, sir.

Q. So that in 1949 you only made $500 from the tax service? A. That is right.

Q. Is that right, sir? A. That is right.

Q. And on that money, Mr. Ford, that was the money that you had available to you for living, is that right?

Mr. Bolan: May I have it clear as to what money he is talking about?

Mr. Feldman: The $5,549, whatever it is.

The Court: Yes. Objection sustained to that. He said that was his net income. What is the next question?

Joseph E. Ford—for Government—Cross

Q. Well, Mr. Ford, would you be good enough to go to the first page of the return, the first page, and look at item No. 5. A. Yes.

Q. Do you have it? A. Yes, I do.

Q. It says there, "Did you receive any other income? Give details and on page 2," and under (158) the total here, do you see that— A. Yes.

Q. —what figure appear there? A. 500.

Q. $500? A. Yes.

Q. Go to page 2. A. I looked at page 2 before.

Q. And there is nothing there? A. Nothing there.

Q. Now, Mr. Ford——

The Court: He says that is the sheet that is missing.

Mr. Feldman: He said C-2 is missing.

The Court: C-2, which is the detailed form for that.

Q. Now, in other words, although you are an accountant you never filled out the data which is required by the Government to show them how you arrive at the $500, is that right?

Mr. Bolan: I object, your Honor.

The Court: Objection sustained.

Q. Well, looking at page 2, do you see a place in there for your gross business, the gross business that you did? (159) A. Yes, I see that.

Q. Did you fill that in? A. I think that is all on another form, the C form.

Q. The C form? A. Yes.

Q. So you didn't fill in page 2 at all? A. The C form takes the place of page 2.

Joseph E. Ford—for Government—Cross

Q. The 1950 return is missing, is that right, Mr. Ford? A. I don't know. I don't have it.

Q. Do you have 1951?

Mr. Bolan: The Government does have 1951 but Mr. Ford does not have it.

Mr. Feldman: That is what I mean.

Mr. Bolan: Will you mark this for identification, plea e, as defendant's exhibit? The defendant asked for it.

(Marked Defendant's Exhibit B for identification.)

Q. You have the 1949 return in front of you and you have the 1951 return in front of you, is that right, Mr. Ford? A. That is right.

Q. Now, isn't it a fact, Mr. Ford, that there (160) was no C form in 1949, that it first came into effect in 1950 and 1951? A. The Government required me to file it.

Q. And did you file it? A. Yes.

Q. Did you always file every form that the Government required you to file? A. I think so, yes.

Q. As I recall it, I think you told us that Mr. Lennon was employed by you? A. That is right.

Q. Did you file the W-2 form for him? A. I did not.

Q. Did you file the 1099 form for him? A. I did not.

Q. You know what the 1099 form is? A. Yes.

Q. What is the 1099 form? A. The 1099 form is the form for reporting the salaries of employees.

Q. If their salaries are more than $600? A. That is right.

Q. But you paid Mr. Lennon more than $600? A. No—yes, I did.

(161) Q. And you did not file a form for him? A. No.

Q. And you did not file the W-2 for for him? A. No, I did not.

Q. Where, Mr. Ford, in your 1951 return did you show the salary that you paid Mr. Lennon? A. Line 11.

Q. What does it say there, sir? A. Salaries and wages.

Q. Yes, how much? A. $2,500.

Q. Now, what were the total salaries that you paid to all of your employees? Isn't that the total salaries? A. That is right.

Q. And included among that, or among them, as I understand your story, is the $1,600 that you paid Mr. Lennon? A. That is right.

Q. And $900 that you paid others? A. Yes.

Q. And you had a gross income of between eight and $10,000 a year in that business? A. Gross $10,000.

(162) Q. $10,000 gross that year, is that right? A. That is right.

Q. And you paid out $2,500 for your employees? A. That is right.

Q. What other expenses did you have? A. I had rent.

Q. How much? A. $2,400.

Q. To whom did you pay that rent in 1951? A. 1951?

Q. Yes. A. I gave that to Clausner.

Q. Clausner? A. Yes, at 222 West 145th Street.

Q. We are talking about the tax service.

Mr. Bolan: Your Honor, I think we are now going into Mr. Ford's personal income tax return. The issue, sir, is the amount of money that Mr Ford paid Mr. Lennon.

The Court: I know, and if there is any question about whether he paid it to him, but I am going to allow a certain amount of cross-examination. Go on but do not go too far.

Joseph E. Ford—for Government—Cross

Q. You were at the Abysinnian Baptist Church (163) with your tax service, weren't you?- A. I left in August.

Q. I know that, but to whom did you pay the rent? A. The 1951 tax filed in March, 1952.

Q. Whom did you pay it to in 1951? A. Clausner.

Q. K-l— A. C-l-a-u-s-n-e-r.

Q. C-l-a-u-s-n-e-r? A. Yes.

Q. And you paid $2,500 for rent? A. No, I think $2,400.

Q. $2,400 for rent? A. Yes.

Q. For what period, sir?

The Court: I do not see that that is material.

Mr. Feldman: Well, I withdraw it.

Q. Isn't it a fact, Mr. Ford, that you had free rent at the Abysinnian Baptist Church? A. This is at 222 West 145th Street.

Q. And that is the rent that you paid there? A. That is right.

Q. But in 1950 did you have any similar rental expense?

(164) Mr. Bolan: Are we talking now about 1950 or 1951?

Mr. Feldman: We are talking about both years.

The Court: Wait a minute. Let us pin it down to one or the other.

What are you talking about now, whether he had to pay rent when he was at the Abysinnian Baptist Church?

Mr. Feldman: That is right, sir.

The Witness: No rent.

Q. No rent at all? A. At the Abysinnian, no.

Q. Let us go to 1950 then, and you had no rent? A. That is right.

Joseph E. Ford—for Government—Cross

Q. Did you have the same number of employees? A. I don't know.

Q. About how much did you pay out in 1950 to employees? A. I don't know.

Q. Go to the year 1951, then. A. Sir?

Q. You had this rent expense, is that right? A. That was an additional expense.

(165) Q. That was an additional expense that you did not have in 1950, isn't that right? A. That is right.

Q. Isn't that right? A. That is right.

Q. What other expenses did you have?

The Court: What is the relevance of this? What are you trying to establish by that?

Mr. Feldman: Well, I would be perfectly happy to tell the Court out of the hearing of the witness.

The Court: Well, we can't go on forever.

Mr. Feldman: I have no intention of doing that, your Honor.

The Court: Well, then, I am not going to allow a complete audit of this man's return unless it has some relevancy to his testimony, and what was paid to Lennon, of course, I will allow that, but this trial certainly is not going to be permitted to last for several weeks, although it probably will if we don't keep it within limits.

Mr. Feldman: Your Honor will recall Mr. Ford's testimony on direct that Mr. Lennon's salary or compensation was based upon the income of his (166) business.

The Court: That is right.

Mr. Feldman: And what I am trying to do, since the 1950 return is missing, I would like very much to go on rather than delay matters, and I am trying to establish what that income was, and how he com-

puted Mr. Lennon's salary, and whether or not in fact these payments that he claims to have made to Mr. Lennon were payments to Mr. Lennon or merely cash manipulations on the part of this particular witness.

The Court: Well, why not go to that point, then? I do not quite see how itemizing his list of expenses is going to get us anywhere.

Mr. Feldman: Your Honor ——

The Court: However, I am not going to cut you off on anything that is irrelevant. You go ahead and ask the question, but I am a little afraid that some of these questions that you are asking now have no relevancy. However, if you can put your finger on the point, any point that is in issue in the case, of course, I will permit you to ask questions about it.

(167) Mr. Feldman: If there is a question that has been asked of the witness, Mr. Reporter, not answered, I will withdraw it so that you need not go back.

Q. Mr. Ford, using 1951 as the basis, you had a rental expense in 1951 which you did not have in 1950, is that right? A. That is right.

Q. Now, did you during the years 1949, '50 and '51 have employees other than Mr. Lennon working in the tax service? A. I did.

Q. About how many of such other employees did you have? A. I don't remember.

Q. In any year? A. I don't remember any year.

Q. Mr. Ford, how much did you pay these other employees? A. Very small.

Q. You mean they were small employees or did you pay them small amounts? A. Small amounts.

Joseph E. Ford—for Government—Cross

Q. Small amounts? A. Yes.

(168) Q. Well, how small? A. I don't remember.

The Court: What were the other employees? What did they do?

The Witness: Clerks.

The Court: Clerks?

The Witness: Yes, copying.

The Court: Copying?

The Witness: Yes, no typing.

The Court: Copying?

The Witness: Copying by hand.

Q. You remember, Mr. Ford, that you told us that you made out all the returns, is that right? A. I made them all out.

Q. All of them? A. Yes.

Q. In 1949? A. Yes.

Q. 1950? A. Right.

Q. 1951, is that right? A. All.

Q. Did you have any accountant working for you and making out returns? A. I don't think so.

Q. Not a single one? A. I don't think so. I don't recall any.

Q. Did you make out Mr. Lennon's return at the (169) same time? A. I don't recall. I don't think I did.

Q. You don't recall a single accountant working for you? A. I don't recall any.

Q. Who is Sonny White? A. Sonny White worked for me also.

Q. Doing what? A. Working as the others.

Q. Doing what, sir? A. As the others.

Q. Did he make out tax returns? A. He might have.

(170) Q. Who is Elmer Collins? A. He never worked for me.

Q. Are you sure? A. Positive.

Q. Any other accountants like Sonny White?

The Court: Wait a minute. He has not said that Sonny White was an accountant.

Q. Did Sonny White make out tax returns? A. I don't remember.

The Court: Is Sonny White an accountant?

The Witness: I don't think he was.

Q. Were there others like Sonny White in your organization? A. No.

Q. He was the only one? A. Mostly. I had a woman. They were women. I think Sonny White—I know he was there one or two years.

Q. Do you recall the name Payne? A. Who?

Q. Payne? A. No. I don't. He never worked for me.

Q. You don't recall that name at all? A. Pardon?

Q. You don't recall that name at all? A. He didn't work for me.

Q. When you say "he didn't work for you," let me (171) ask you this, Mr. Ford: you were busy being a district leader, weren't you? A. Yes, sir.

Q. Sir? A. Yes.

Q. And you were working down at the Borough President's office in your secret job during the day, weren't you? A. That is right.

Q. And at night you were out attending to your political functions? A. That is right.

Q. When did you make out the tax returns? A. Days.

Q. What days? A. Well, I just got to explain to you that I didn't have to go to the Borough President's office unless I wanted to.

Joseph E. Ford—for Government—Cross

Q. I see. Did anybody help you make out tax returns? A. No.

Q. Nobody at all? A. No.

Q. Did it all yourself? A. Yes.

Q. Acy Lennon was a friend of yours? A. Yes.

Q. Did you do most of them? A. I said I did most of them. I don't recall anybody making out any.

(172) Q. Now, which is it, either you made them all out of you didn't. A. I think I did.

Q. And is that the testimony that you want this jury to believe? A. Yes.

The Court: He has answered the question.

Mr. Feldman: Fine.

Q. Mr. Lennon was in this tax service with you? A. Yes, he was.

Q. You said Mr. Lennon never made out any tax returns. A. No, he didn't.

Q. Who made out his tax returns? A. I don't know.

Q. Didn't you do it? A. No.

Q. You are certain? A. Pretty certain.

Q. Well, are you certain or uncertain? Which is it? If you don't recall, tell us so. A. I don't think I did.

Q. You don't think you did? A. No.

Q. Now, you had Mr. Lennon or you paid Mr. Lennon, as I understand your testimony, you paid him $1600, is that right, sir? A. That is right.

Q. And you paid Mr. White; is that right? (173) A. He didn't work full time; he worked part time.

Q. But he did work? A. Yes, he worked.

Q. Did he get paid? A. Oh, sure, everybody got paid.

Q. Who paid them? A. I did by check.

Q. All of them? A. Most of them I paid by check.

Q. All the others by check, is that right? A. That is right.

Q. Now, as of this moment can you recall any of the names of the people who worked for you in 1949, 1950, 1951, other than Mr. Lennon and Mr. White whom I told you about? A. No, but may I say this——

Q. Can you or can't you?

The Court: He says no. Go ahead.

The Witness: Mr. Lennon was in charge of the office. He hired these girls to work. He saw that they were paid. Mr. Lennon paid cash. I gave him checks for whatever it was, and maybe he can recall.

Q. And all that I understand you to say you left up to Mr. Lennon? A. That is right.

Q. And as people came in for the service they usually paid for it, didn't they? (174) A. I beg pardon?

Q. As people came in to take advantage of your service they usually paid for it? A. That is right.

Q. What did you do with the money that you received, this eight or ten thousand dollars during the course of 1949? Did you bank it? A. I banked it.

Q. What bank? A. Several banks.

Q. Which ones?

The Court: What difference does that make in this case?

Mr. Feldman: The difference that it makes is this, your Honor, that I think as we go on we will be able to show that didn't happen, and the questions go to the question of credibility of this man.

The Witness: I have my bank books.

The Court: All right. What banks did you bank in?

Joseph E. Ford—for Government—Cross

The Witness: Manufacturers Trust, Chase National Bank, Modern Industrial, and there were some others that I don't remember now.

Q. Manufacturers Trust? A. Corn Exchange, Chase National Bank.

(175) Q. All over the place? A. All over the place.

Q. And as you got the money in you put it into the particular bank, is that right? A. Yes.

Q. Let us go to 1950 as an illustration, Mr. Ford, or 1949; I am sorry. In 1949 were you under a contempt proceeding because you had not paid back alimony? A. In 1949?

Q. Yes. A. I might have been.

Q. You don't recall, is that right? A. No, I don't.

Q. And around income tax time—incidentally, who was Lurline's lawyer? Do you recall his name? A. Mr. Berman.

Q. Mr. Berman is the the name? A. Yes.

Q. You remember that? A. I do.

Q. And he was always pressing you for money, wasn't he? A. Always.

Q. And in pressing you for money did you always pay him? A. Yes, I did.

Q. Well, then, how many contempt proceedings were you subjected to, do you recall? A. How many?

(176) Q. Yes. A. No, I don't.

Q. Did you ever pay the back alimony without being threatened with jail?

The Court: What difference does that make?

Mr. Feldman: I think we will be able to connect it, your Honor.

The Witness: I never was that far behind.

Q. Do you remember going to jail on two occasions? A. Only $50.

The Court: Was that back alimony you said?

The Witness: $50, sir.

The Court: When was that?

The Witness: About 1949.

Q. Did you ever reach a point where you owed Lurline as much as $800? A. Oh, that is 1953 and 1954.

Q. But not before then? A. No.

Q. Are you certain? A. Positive.

Mr. Feldman: May we have the files from the County Clerk's office, please?

(Clerk hands documents to Mr. Feldman)

Q. Let me ask you this, if I may, Mr. Ford: Did you ever under oath swear before a court in any proceeding that the only income you had was (177) from your job? A. I don't remember.

Q. No recollection? A. No.

Q. Mr. Ford, in 1951, in January of 1951, you were still at the Abyssinian Baptist Church, weren't you, sir? A. I was.

Q. And you were running a tax service in January of 1951? A. Yes.

Q. That was before you left the church, wasn't it? A. That is right.

(179) Q. Let me ask you this, Mr. Ford: During 1949 and 1950 and 1951, during all of those three years, or any single one of them, was your salary garnisheed? A. Yes.

Q. By whom, sir? A. W & J Sloane.

Joseph E. Ford—for Government—Cross

Q. The people that you bought the $10,000 furniture from? A. Yes.

Q. That you said you paid for by cash or check? A. Yes, when I got paid, cash and check.

Mr. Bolan: I did not get that answer. I am sorry.

(Answer read)

Q. And how much did they garnishee your salary for at the Borough President's office? A. I don't remember, 10 per cent I guess.

Q. Sir? A. Ten per cent of my salary.

Q. Ten per cent of your salary it would have been? A. It could not have been more than that.

Q. What? A. It could not have been more than that.

Q. How do you know that? A. I think that that law so states.

Q. Are you familiar with it?

(180) The Court: Let us go on with something else.

Q. So we have this situation, then, in 1949 and '50 and 1951, do we not, Mr. Ford, in which you were in alimony difficulties with your wife, is that right? A. I don't know what you mean by in "alimony difficulties."

The Court: He has already testified about that and now let's not recapitulate. Let's go on.

Q. And W & J Sloane were pressing in on you for payment, and how much was the judgment that they had against you? A. I don't know.

Q. About $5,000? A. No, much less than that.

Joseph E. Ford—for Government—Cross

Q. $4,000? A. I don't remember, not too much, two or three thousand.

Q. Sir? A. It could not have been over two or three thousand dollars.

Q. Two or three thousand dollars? A. Yes.

Q. Would you recognize a judgment when you see one, Mr. Ford? A. I don't know.

Mr. Bolan: I object, your Honor.

(181) Q. Would this refresh your recollection as to the amount of the judgment, and I draw your attention to this court decree——

The Court: The only question is whether it refreshes your recollection. Does it?

The Witness: Well, it does not.

Q. It does not refresh your recollection at all? A. No, it does not.

The Court: Let me see the file.

Mr. Feldman: Yes, your Honor (handing to Court).

The Court: What is your question?

Mr. Feldman: The question, your Honor, was whether or not the document which I showed the witness refreshes his recollection as to the amount of the judgment with W & J Sloane, of that W & J Sloane obtained against him.

The Court: Do you know what is the amount of the judgment?

The Witness: I said two or three thousand dollars. I don't remember, your Honor, but evidently some fees have been added to that which I don't know about. I don't remember.

Joseph E. Ford—for Government—Cross

Q. Well, this shows that the amount claimed in the complaint was $3,852, and the final (182) judgment with interest, plus marshal fees and all that, was $4,061.63.

The Witness: I said about three thousand, your Honor.

The Court: All right.

Mr. Feldman: Now, may I see Exhibit 9, please, Mr. Bolan?

(Mr. Bolan hands document to Mr. Feldman.)

Mr. Feldman: And can I have 10 and 11?

Mr. Bolan: Yes (handing documents to Mr. Feldman.)

Q. Acy Lennon was your right-hand man, was he, during the time you were on friendly terms with him? A. I think he was. I trusted him.

Q. Yes. You knew his affairs, didn't you? A. Pardon?

Q. You knew his affairs, didn't you? A. No, I won't say I did.

Q. Well, you knew what he was doing? You knew he had a luncheonette, and you testified on direct examination about that, didn't you?

The Court: What is the question now? You asked him about three questions.

Mr. Feldman: I will withdraw all of them.

(183) Q. You knew Acy had a luncheonette, didn't you? A. In prior years, yes.

Q. We are talking about the years 1949, '50 and 1951. A. He did not have the luncheonette in 1949.

Q. Did he have the luncheonette in 1950? A. I don't remember what year it was.

Joseph E. Ford—for Government—Cross.

Q. A candy store, something like that? A. A candy store.

Q. Now, is that the distinction you make between the luncheonette and the candy store? A. Wouldn't you think so?

The Court: Ask a question now.

Q. That is a place called Tiny's, wasn't it? A. I don't know what the place was called.

Q. Didn't you testify on direct examination that the place was called Tiny's?

Mr. Bolan: He did not, your Honor.

The Court: No, you are confusing it. I think that was referred to in the opening.

Mr. Feldman: That may very well be, your Honor. If it was, I apologize.

The Court: All right, go ahead: next question.

Q. Now, did you know that Mr. Lennon had a bank account? A. I believe I did.

(184) Was that a bank account for his candy store? A. I don't know.

Q. But you knew that he had a bank account, is that right? A. Yes, I did.

Q. And the check that you gave him, Exhibit 9 I believe it is, was dated March 18, 1949, is that right? A. May I see it?

Q. Surely (handing to witness). A. March 18, 1949.

Q. Now, can you by looking at that check, Mr. Ford, recall how many days prior to March 18, 1949, you made a deposit to cover that check? A. Yes, I made a deposit. I was making deposits daily.

Q. I understand, but was there any single large deposit immediately prior to that day? A. Yes, I think so.

Joseph E. Ford—for Government—Cross

Q. How much? A. I don't know.

Q. Was it $3,000 or $2,000? A. It may have been.

Q. And at that time, Mr. Ford, you were in financial difficulties, weren't you? A. I didn't say I was.

(185) Q. Well, I am asking you. A. I don't think I have ever been so much in financial difficulties.

(187) Q. Mr. Ford, on your direct examination you told us a story about certain check transactions that you had with Mr. Lennon, a cash transaction that you had, a transaction with a Mr. Kent, is that right?

The Court: He had, all right. Now ask him another question.

Q. Now, did you testify before the grand jury as to any of these transactions at all? A. I don't think so.

Q. Did you ever testify before the grand jury with respect to Mr. Lennon? A. Yes.

Q. And about how long did it take you to testify before the grand jury, do you recall? A. About two minutes.

Q. Now, how do you now recall that it was two minutes? A. Well, I remember.

Q. You just remember it? A. Now I remember it was about two minutes, two or three questions.

(188) Q. And was the subject of your testimony concerning Mr. Lennon any of the testimony that you have given here? A. I don't get the question.

Q. Any of the testimony that you have given here today?

The Court: Read the question, Mr. Reporter.

(Question read)

A. Well, I would say that they asked me about these checks.

Q. Do you recall telling us a moment ago that there was nothing like that in the testimony?

The Court: No, I don't think he said that.

Mr. Feldman: If I misunderstood the witness, I will apologize.

The Court: I think you had a broad question there about Mr. Kent and a lot of other things.

Q. Well, you testified, Mr. Ford, before the grand jury concerning the checks, is that right? A. Just the checks.

Q. Nothing else? A. Nothing else.

Q. And in testifying concerning the checks, Mr. Ford, about how long did it take you to testify? A. About two minutes.

(189) Q. All you did was come in and tell the checks you had given to Acy? A. They asked me what these checks represented and I told them.

Q. For the work that he did for you, is that right? A. That is right.

Q. Now, tell me this: How did the Government get the checks, or did you bring them? A. They came to my office to get them.

Q. Sir? A. Somebody came to my office to get them while I was not there.

Q. Well, did you know that it was from the Government? A. Yes, they gave me a receipt.

Q. They gave you a receipt? A. Gave the man a receipt.

Q. You gave the man a receipt? A. The Government, the man.

Q. I see, the Government man left a receipt for it? A. That is right.

Vivian Della Lennon—for Government—Direct

(213) New York, October 8, 1956,
10:30 o'clock a.m.

TRIAL RESUMED.

The Court: Will the witness, Mr. Ford, return to the stand? Is he here?

Mr. Bolan: Just a minute. Excuse me, your Honor. There is a witness from out of town and Mr. Feldman has agreed that we might put her on.

The Court: You want to put her on out of turn? Sure, go ahead.

Mr. Bolan: Vivian Lennon.

VIVIAN DELLA LENNON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Bolan:

Q. Where do you live, Miss Lennon? A. 112——

The Court: Will you keep your voice up because everybody has to hear you.

A. 112-50 Northern Boulevard, Corona, Long (214) Island.

Q. And that is the Dorie Miller Apartment project, is it? A. Yes, it is.

Q. When were you born, Miss Lennon? A. September 30, 1934.

Q. Now, prior—how long have you been living at Dorie Miller? A. I would say approximately about two years and a half.

Q. Prior to that where did you live? A. 2276 Seventh Avenue, 134th Street.

Q. And how long did you live at that address? A. I would say approximately ten years.

Q. With whom do you live at Dorie Miller? A. My mother and my father and my sister.

Q. And your father is Mr. Acy Lennon, the defendant in this case, is that right? A. That is right.

Q. And what is your mother's name? A. Beatrice Lennon.

Q. What is your sister's name? A. Barbara Lennon.

Q. Do you have any other sisters? (215) Not to my knowledge.

Q. Do you have any brothers? A. Well, not to my—not live with us, no; but it has been rumored that I have brothers.

The Court: What was that you said? I couldn't hear.

The Witness: I said not—we don't have any brothers that live with us, but it has been rumored that my father has two sons.

The Court: It has been——

Q. When did you first hear this rumor? A. I can't recall the date. When I was young, a young girl, I should say.

Q. Now, you have appeared before the grand jury, have you not, Miss Lennon? A. Yes, I did.

Q. Do you recall being asked whether you ever had any brothers? A. Yes, I do.

Q. Do you recall what your answer was? A. I believe I said not to my knowledge.

Q. You also were questioned by the Internal Revenue Department under oath, is that right? A. I was ques-

tioned, I believe, only once by the (216) Internal Revenue unit.

Q. And you were questioned once before the grand jury, you recall that? A. Oh, yes.

Q. And you also were questioned once by the Internal Revenue? A. Yes.

Q. And do you recall being asked that same question as to whether you ever had any brothers? A. No, sir, I don't recall being asked that before the grand jury, not that I recall.

The Court: What was that?

The Witness: I don't recall being asked that question before the grand jury.

The Court: I thought you said a minute ago that you had been questioned before the grand jury.

The Witness: Yes, but I said the first time when I was questioned in the room I believe I was asked that question.

The Court: Were the members of the grand jury sitting there?

The Witness: No, it was a small room.

Q. Well, do you remember what you were questioned about in the grand jury?

The Court: This is while you were a witness (217) before the grand jury?

The Witness: My address, and what I was doing at present, where did I live, who I lived with. I think that is all, as far as I remember the questions.

Q. Now, you had been questioned as to whether you ever had any brothers before by the Government?

Mr. Feldman: I object. It is a question based on a state of facts not in evidence.

The Court: The witness said she had been questioned. Overruled.

Q. Is that right, Miss Lennon? A. I have been asked if I had any brothers living, did I know any brothers.

Q. Did you ever tell the Government that you heard a rumor that you did have brothers? A. No, I didn't.

The Court: Is this the first time you ever said to anybody that you heard these rumors? Is this the first time you said that?

The Witness: Yes, I mean in this position I am here.

The Court: All right.

Q. Now, what education have you had, Miss Lennon? A. I have been to Public School 119, and I have (218) been to junior high school.

The Court: Could you speak a little louder? I am afraid some of the jurors can't hear what you are saying.

A. I attended Public School 119, attended Junior High School 96, I attended Julia Richmond High School, I also took other courses at Rhodes——

The Court: Preparatory?

The Witness: Prep School. I took non-matricular courses at City College; I attended South Carolina State College for three years, and at present I am a student at the American State College.

Q. Had you ever worked for your father? A. Yes, I have helped my father.

Q. When was that? A. It was following my graduation from high school.

Q. That was January, 1952, is that right? A. Yes.

Q. Now, what sort of work did you do for your father? A. Well, at that particular time I was attending night classes also, and I was going to the church to help him out.

(219) Q. At the Abyssinian Baptist Church? A. Yes, that is right.

Q. To help him out with what? A. With this tax business. I mean tax forms.

Q. He ran a tax business in the Abyssinian Baptist Church in 1952, is that right?

Mr. Feldman: May we have the dates, if your Honor pleases?

The Court: The date was put in the question.

Mr. Feldman: May we have the dates to which Mr. Bolan is referring?

The Court: No, you can bring it out on cross examination. The date was put in there.

Do you want that question repeated?

The Witness: Yes, sir.

The Court: Please read the question, Mr. Reporter.

(Question read.)

A. Yes, the month following my graduation from high school, and that would be January, February and March of 1952, or February and March. I was in school until the end of January.

Q. What sort of work did you do for your father? A. Sometimes I would answer the phone. I would (220) only

stay a couple of hours and sometimes I would copy income tax forms.

Q. And when you say "copy income tax forms," what do you mean by that? A. Well, after they were prepared and finished, I would make pencil copies.

Q. Now, was anyone else working for your father at that time? A. Yes, I believe so, and a certified public accountant.

Q. Did he have more than one person working for him apart from yourself? A. At times there were two.

Q. Did you ever collect any moneys from any people? A. Well, if someone would pay, or usually if they wanted to leave some money for my father, they would give it to me and I would write it on a slip of paper and place it on the desk for him when he came in the office.

Q. Your father was the boss of this business, is that right? A. Yes, I would call him that, yes.

Q. Everybody in the Abyssinian office worked for (221) your father in that tax service, is that right? A. You mean like what I was doing for him?

Q. Yes. A. Yes.

Q. In the tax service? A. Yes, to my knowledge.

Q. Now, this year 1952 was the only year that you worked for your father in that tax service? A. Yes.

Q. Have you ever seen anyone who was told here was your brother? A. No.

Q. Has your father lived with your mother as far back as you can remember? A. Yes.

Q. And your sister and you have lived with your father and mother as far back as you can remember, is that right? A. Yes.

Q. Have any other people, any other children, lived with you and your sister and your father and mother? A. At one time we had a sister-in-law who stayed with her child, but I mean other than that, no.

Mr. Bolan: I have no further questions at this point.

Vivian Della Lynnon—for Government—Cross

(222) *Cross-Examination by Mr. Feldman:*

Q. May I call you Vivian? A. Yes.

Q. Vivian, up until this moment have you ever discussed this case with me? A. No, I haven't.

Q. Do you know who I am? A. I know I can't repeat the name because I don't remember it, but I can remember meeting you once, only once.

Q. Where was that? A. Upstairs. I think it was in Mr. Bolan's office or one of the reception rooms.

Q. And I came by and told you that there was going to be no trial that day? A. Yes.

Q. Is that right? A. You told us on that day.

Q. And you waited for Mr. Bolan? A. Mr. Emanuel would tell me what to do.

Q. Mr. Emanuel is the gentleman sitting here? A. Yes, in the brown suit.

Q. Now, Vivian, the only time that you worked for your father in the tax service was in 1952? A. Yes, the month following my graduation.

(223) Q. Can I ask you this, Vivian: At any time did anybody in the Government in any manner ever ask you whether or not your father had any illegitimate children? A. They didn't use that phrasing.

Q. Now, the first time, Vivian, that you heard about the existence of other brothers was about when, can you recall? A. I can't recall definitely. I don't remember the exact time.

Q. Would you say you were a young woman then? A. Yes, I was considerably younger.

Q. And you used the words "rumors," that you had heard rumors, is that right? A. Yes.

Q. And did other people come to you and state things to you about your father's illegitimate children? A. I have heard it, you know, by way of talk.

Q. That is what I mean. A. Yes.

Q. And did you discuss it with your father? A. No, I didn't.

Mr. Feldman: I have no further questions.

Re-direct Examination by Mr. Boland:

Q. Miss Lennon, have you discussed with any attorney the matter of your interrogation by the United (224) States Attorney? A. No, I haven't.

Q. Have you ever been represented by an attorney in any of your appearances before the United States Government? A. The first time I was questioned, I believe, I guess in the room upstairs, an attorney was present in the room.

Q. And what was his name? A. Jackson.

Q. Harrison Jackson? A. Yes.

Q. And he is also Congressman Powell's attorney, is he not? A. I couldn't say for sure now but I believe he once did work for Congressman Powell.

Q. And when you were questioned by the Internal Revenue Service prior to the time that you went before the grand jury, Mr. Harrison Jackson was present while you were questioned, was he not? A. Yes, he was.

Q. And he also accompanied you to the grand jury room, did he not? A. No, he did not.

Q. No, not in the room, but right up to the time he was waiting outside, is that right? (225) A. No, there were two separate occasions, and are you speaking of the same day?

Q. No, two separate occasions. A. No one accompanied me the second time.

Q. Do you remember being questioned in the grand jury as to who arrived at the court house with you? A. The grand jury; no, I don't remember.

Q. Perhaps I can refresh your recollection. A. Well, no, I came alone before the grand jury, because I was working last summer if I can recall, and I went to work and I told my boss that I would have to have, you know, the remainder of the day off, and if I can remember I came down by myself.

Q. Well, now, just to refresh your recollection, do you remember stating in the grand jury that you came down in an automobile with Mr. Jackson and Mr. William Lewis? A. I believe that—oh, wait a minute, wait a minute. I know that the first time I came down was when they had me up in the room. Let me see, it wasn't the same day or they were both on the same day and I came down in the car with Mr. Jackson and Mr. Lewis, and if I remember before the grand jury, that I remember, but what time I did ride down with Mr. Lewis and (226) Mr. Jackson.

Q. Well, can you recall what time when Mr. Jackson was sitting right there when you were questioned? A. Yes, that was the time I was upstairs in the small room.

Q. And the other time was when you went before the grand jury and when you came down in the automobile with Mr. Jackson and Mr. Lewis? A. What I am trying to say is that if it all happened in the same day I did come down in the car with Mr. Lewis and Mr. Jackson.

Q. Well, now, could this refresh your recollection, that you went to 253 Broadway on July 19th with Mr. Jackson? A. Yes, that was the building I think where they have the Roger Peet's store downstairs, or some sort of men's clothing store, yes.

Q. That was on July 19. Now, do you remember coming here in an automobile with Mr. Jackson to the grand jury on August 8th? A. I believe I came down with Mr. Jackson in the car on July 9th when he was present in the room with me I believe so. I know for sure one time but

I can't remember if it was the grand jury or the day he was (227) in the room with me.

Q. Well, would it refresh your recollection if I told you that you were asked in the grand jury room on August 8th whether you came down with anybody and that you answered Mr. Jackson and Mr. Lewis? A. Oh, if I said I did, I did then, I must have come down with Mr. Jackson and with Mr. Lewis, and I remember Mr. Jackson, yes, sir, but I can't remember Mr. Jackson bring me down the first time or not, but I do know that he brought me down one time; so if I said it in the grand jury room, it was that day, then it was that day then.

Q. Well, would it refresh your recollection also if I tell you—no, I withdraw that.

You have said that Mr. Jackson was sitting while you were being questioned on one time?

Mr. Feldman: Your Honor, this is in the nature of cross-examination, and this is the Government's own witness.

Mr. Bolan: I am attempting to refresh her recollection.

The Court: That is all right. She has said that. What is the next question?

Q. The next question is this: Did Mr. Jackson (228) discuss with you in any way the manner of your interrogation before the Internal Revenue Service or before the grand jury? A. No, he didn't.

Q. He didn't say a word to you about what might take place? A. No. I mean, he told me when I went to the grand jury, he informed me that I was going to go before the grand jury and not discuss in any matter, in any manner.

Joseph E. Ford—Recalled—for Government—Cross

Q. He has not discussed it with you since the last time you appeared—the time that you appeared before the grand jury? A. I haven't seen him since that time.

Mr. Bolan: I have no further questions.

The Court: You are excused.

Mr. Bolan: May the witness be released from the Government subpoena so she may return to school?

The Court: You don't need her, I take it?

Mr. Bolan: No, your Honor.

The Court: All right.

(Witness excused.)

The Court: Do you want Mr. Ford to come back now?

(229) Mr. Feldman: Yes, sir.

Joseph E. Ford resumed.

The Court: You may proceed, Mr. Feldman.

Cross-Examination continued by Mr. Feldman:

Q. Mr. Ford, do you recall that in your direct examination by Mr. Bolan you described Mr. Lennon as an interviewer and as a bookkeeper? A. That is right.

Q. Now, in referring to him as a bookkeeper were you trying to convey the impression that Mr. Lennon kept all of your books in all of your activities or just of the tax service? A. The tax service.

Q. Just the tax service. And what was the extent of Mr. Lennon's bookkeeping activities? A. He kept the records and took the cash, turned it over to me at night.

Q. When you say he kept the records, what records did he keep? A. Names, addresses, and then he took the information from them regarding their tax.

Q. You mean he interviewed the clients of your service, Mr. Ford? (230) A. That is right.

Q. And if they paid money, he would make a record of the payment? A. That is right.

Q. And record who paid it? A. That is right.

Q. And the amount paid? A. That is right.

Q. Was that the total extent of his bookkeeping service? A. He would take the cash and turn it over to me at night.

Q. And would you sign a receipt for the cash? A. Yes, I signed my name by the amount given.

Q. Let me ask you this, Mr. Ford: Since we parted on Friday afternoon to this moment here, have you discussed this case at all with any representative of the Government? A. Yes, I have.

Q. And with whom did you discuss it? A. Mr. Bolan.

Q. And did you bring the records down to Mr. Bolan that you said you were going to bring? A. I brought all those I could find.

(231) Did you give over those records to Mr. Bolan? A. I did, sir.

Q. Did you analyze those records with Mr. Bolan? A. Somewhat.

Q. Did you discuss your testimony with regard to those records with Mr. Bolan? A. Probably did.

Q. Well, about when did you discuss it? When did this take place? A. This morning.

Q. How early this morning? A. Oh, around 9:30, I guess.

Q. Not before then, sir? A. It might have been.

Q. Was Mr. Emanuel present? A. No, I think not; he was not present.

Q. At any time? A. He was in the room, but he went out.

Q. And in analyzing your records did you have before you at that time the tax returns which were produced here in court on Friday? A. I did not.

Q. Now, tell me this, Mr. Ford, if you will, have you all of the records that you could find here? (232) A. Yes, I have.

Q. Do you have them with you? A. I have them here.

Q. Can you produce them, or does Mr. Bolan have them? A. Mr. Bolan has them.

Q. Are there any records which Mr. Bolan, are there any records in existence which Mr. Bolan does not have which you did not give Mr. Bolan or which Mr. Bolan returned to you, either way?

Mr. Bolan: I object. I think the question is quite broad, your Honor.

The Court: I will let him answer it. If the witness doesn't understand it, he can say so.

A. What did you want to know? What was the question, please?

Q. Are there any records that Mr. Bolan does not have

The Court: Relating to the tax service.

Mr. Feldman: Relating to the records which he has brought down in response to the question on Friday which relate to the tax service, your Honor.

A. I think not.

Q. Well, don't you know? A. I don't know what Mr. Bolan has.

(233) Q. I am talking now about the records that you brought down this weekend.

The Court: Let us not argue. Did you bring down all the records about the tax service that you could find?

The Witness: I did, sir.

Q. Does Mr. Bolan have them all? A. He has.

Q. Here in the courtroom? A. Evidently.

Q. In other words, you turned those records over to Mr. Bolan? A. I did.

Mr. Feldman: Mr. Bolan, would you be good enough to produce them so that the witness may have them before him?

(Mr. Bolan hands to witness.)

Q. Now, you recall testifying, do you not, Mr. Ford, that your gross income from your tax service was between eight and ten thousand dollars a year? A. Something like that, yes, sir.

Q. Do you recall so testifying? A. I did.

Q. All right. Now, what records do you have before you? (234) A. I have the record books, I have two books that I could find.

Q. What do those books relate to? A. Information that Mr. Lennon took.

Q. Do you recall being asked, Mr. Ford, on Friday to bring down all of the records of your income and all of the records of your expenses for the years 1949, 1950 and 1951, as you may have had them? A. Those that I could find I brought.

Q. Are these the only records that you could find? A. That is right.

Q. So that with regard to all of your other activities you could find no other records?

The Court: As I understand, the question was with reference to the tax service.

Mr. Feldman: So that I may refresh the Court's recollection on that, I have the transcript of the witness's testimony.

The Court: Let us make it very clear. Are you asking him whether he had books about his other activities or just books about his tax service? Let us get that clear. Just so that we may know what we are talking about. I am a little confused as to which books you are looking for, if there are any. (235) You don't need to look at the record. You can ask the question directly.

Mr. Feldman: I think it would refresh the witness's recollection as to what he agreed to bring down.

The Court: What he agreed—all right. I believe he was asked about these books in relation to the tax service. You say he promised to bring some other books.

Mr. Feldman: Yes.

The Court: What other books did you look for? Did you look for any other books?

The Witness: I did not, sir.

The Court: All right. Have you got any other books about your other expenditures?

The Witness: I do not.

Q. Mr. Ford, do you recall on Friday being asked the following questions and making the following answers, and I refer to page 106:

"Q. Well, as an accountant, sir, did you keep a set of books for yourself showing your income and your own expenses? A. Yes, sir, I did.

"Q. Where are those books? (236) A. In my office.

"Q. And are they available? A. They are.

"Q. What years do they cover? A. I don't recall how long they will go back.

"Q. But they do go back quite a ways? A. Yes.

"Q. And are they in regular ledger form or cash book form? A. Yes.

"Q. So that by looking at those books you would be able to tell what you earned, that is, the money that you received and the money that you paid out? A. That's right.

"Q. And are you willing to bring those in? A. Yes.

"Q. And from those books, Mr. Ford, you can tell us, could you not, what entries you yourself made at the time the transactions were had? A. That is right.

"Q. But sitting on the stand here at the moment can you recall the entries that appear in those books? A. The amounts?

"Q. Yes. (237) A. Between eight and ten thousand dollars.

"Q. But beyond that you can't go? A. No."

The Court: What is your question?

Q. Now, my question is, Mr. Ford, where are those books?

Mr. Bolan: He has testified, your Honor——

The Court: Preceding that testimony, Mr. Feldman, were questions about the books relating to the tax service.

Mr. Feldman: No, sir, they were questions relating——

The Court: I have read that testimony and, really, in my mind, these preceding questions were books about the tax service.

Mr. Feldman: Your Honor, may I——

The Court: Maybe the witness was confused, as I was, but I thought that those questions related to what he received and expended from the tax service. Maybe we were both confused. But certainly that was my impression, and it is still my impression from reading the whole transcript. But go ahead: ask him the next question.

Q. Mr. Ford, in response to the questions that (238) I read to you a moment ago, were you asked those questions and did you make those answers? A. I was under the impression that the——

Q. No.

The Court: He did. The transcript is right.

A. I did.

Q. Now, Mr. Ford, were you asked these questions and did you make these answers, and I read from page 101:

"Q. Now, in your thirty-four years of experience, sir, in fillin gout Form 1040, for however long you filled them out, isn't that the place where you usually report your income from business? A. The Government has another form called C, which I filled out and placed in here.

"Q. And you say that is missing? A. It is missing.

"Q. Do you have a copy of it? A. In my file home at the office.

"Q. Wherever you have it A. I don't think so. 1949 I don't think I would have.

"Q. Did you make a copy of it? (239) A. I only keep them about five years. Yes, I made a copy."

Were you asked those questions and did you give those answers?

The Court: He was. What is the question?

Joseph E. Ford—Recalled—for Government—Cross

Q. Now, going then to——

The Court: What is your question? Don't——

Mr. Feldman: Your Honor, there was a host of material in between them that——

The Court: You are not laying the proper foundation to read the testimony. Ask the question and see if there is some contradiction. What is it you want?

Mr. Feldman: Well, I can only do it by continuing to read and omitting a lot of extraneous matter.

The Court: I will sustain that objection. We are not going to read all the testimony here.

Mr. Feldman: I am not saying that at all.

The Court: All right. Ask a question. Ask him a question. Don't read a lot of testimony and say, "Is that the testimony you gave?"

Q. Mr. Ford, do you recall being asked on Friday about your business activities, all of your business activities? (240) A. I think so.

Q. Were you asked these qestions and did you give the following answers: "Q.——"

Mr. Bolan: Which page?

Mr. Feldman: 103.

Q. "Q. So in 1954 when you were first interrogated by the Government concerning payments made by you to Mr. Lennon you had a record of your business activities, did you not? A. That was not the question they asked.

"Q. I didn't ask you what they asked, sir. I asked you whether or not in 1954 when you were first questioned by the Government you still had available the records of your business activities? A. I have some form of record in my office now.

"Q. Can you answer my question?"

The Court: What is the question you are asking?

Q. The question I will ask now is, were you asked those questions and did you give those answers?

The Court: He did. They are in the record. What is your question?

Q. My question is this, Mr. Ford. Where are the business records to which you referred in making (241) the response to those questions? A. The only records I have are here pertaining to my income tax business.

Q. Where is the copy of the C form? A. I don't have it.

Q. Where is the information from which you made up your C form for 1949? A. I made a copy and I have a record here.

Q. Is that the only business activity you had, your tax service, other than your jobs, of course? A. I had other business activities.

Q. What other business activities did you have, Mr. Ford? A. I was a Democratic leader and I had a lot of activities.

Q. What were some of the other business activities? A. I had contracts.

Q. To do what, sir? A. Jobs.

Q. What jobs? A. Forms.

Q. Were you paid for those? A. No.

The Court: You use "contracts" there in the political sense and not the legal sense?

The Witness: Political sense.

(242) Q. Did you run a dance hall, Mr. Ford? A. The club ran a dance hall.

Q. You didn't run it? A. The Witoka Club ran it.

Q. W-i-t-o-k-a? A. Witoka Democratic Club.

Q. Who was the landlord of the premises? A. Mr.——

Q. Was it Klausner? A. Mr.——.

Q. K-l-a-u-s-n-e-r? A. That is right.

Q. Was it to Mr. Klausner that the twenty-five or twenty-four hundred dollars in rent was paid that you told us about when you were talking of 1951? A. Evidently it was.

Q. Was that rental paid by you, Mr. Ford, or by the Witoka Club? A. Witoka Club.

Q. That was actually not your expense, Mr. Ford, was it? A. It was the Witoka Club.

Q. So that when you included it in the tax return, sir, you included an expense which was not your own? (243) A. I still had to pay rent.

The Court: Do I take it from what you say that the rent for the dance hall was different from the rent for the quarters you used for your tax service?

The Witness: That is right, I had an office.

Q. Mr. Ford, tell me how much rent did you pay for the dance hall and how much rent did you pay for your tax service? A. I paid all the rent because I was Democratic leader; I was responsible for the expenses.

Q. Tell me this, at the dance hall did you have a checkroom concession? A. Yes, I did.

Q. Who ran the checkroom concession? A. Run by the club.

Q. Who was the gentleman who ran it? A. The gentleman?

Q. Yes. A. Several people.

Joseph E. Ford—Recalled—for Government—Cross

Q. Was there a gentleman by the name of Alonzo something or other who ran it? A. He worked there once, yes.

Q. Did you pay Alonzo a salary? A. I think he got $50 a week.

(244) Q. Looking at your 1951 tax return——

Mr. Feldman: Do you have it, Mr. Bolan?

Q. Do you have it before you, Mr. Ford?

Mr. Bolan: Just a moment.

(Mr. Bolan hands to witness.)

Q. What appears there in 1951 for salaries paid? A. That didn't include the Witoka Club.

Q. What appears there, Mr. Ford? A. 2500 my tax——

Q. How much? A. $2500.

Q. $2500. You said Alonzo $50 a week, is that right? A. Alonzo wasn't there that year.

Q. Did you run it in that year? A. Yes.

The Court: Meaning what?

Q. The dance hall. A. Yes. The club ran it.

Q. You were the club, is that right, Mr. Ford? A. I was the leader.

Q. You took in all the money? A. I was the leader.

Q. Did you take in all the money? A. No, I didn't.

(245) Q. Did you pay out all the expenses? A. Most of them.

Q. Tell me this, Mr. Ford, who is Ernestine Glasgow? A. One of the girls that worked for me.

Q. Was she paid by you? A. She was.

Q. How much was she paid a week? A. I don't remember.

Q. How long did she work for you? A. She worked for one or two years.

Q. Would it help you refresh your recollection, Mr. Ford, if I were to tell you that Miss Glasgow received $55 a week from you? A. For how long?

Q. For the one or two years that she worked. A. She didn't work the whole year.

Q. What? A. She didn't work for me the whole year.

Q. What part of the year did she work for you? A. About two months.

Q. Mr. Ford, with regard to the 1949 tax return, do you have that book there? Go to the 1949 book. A. I don't have the 1949 book.

(246) Q. What book do you have? A. 1950 and 1948.

Q. Do you recall being asked about the year 1949? A. I think I do.

Q. What happened to the 1949 book? A. I don't have it.

Q. Who has it? A. May I explain something to you?

Q. Who has it, if you know, sir?

The Court: Do you know who has it or what happened to it?

The Witness: I would have to explain that, your Honor.

The Court: He has asked you if you know.

Q. Do you know who has it? A. I left the church in August, 1951. I left all of my books, all of my records behind. I didn't get them until February, 1952. At that time I got some of them; the others I didn't get, so Mr. Lennon or somebody can tell you where they are.

Q. But you can't? A. I can't tell you where they are; they were not returned to me.

Q. Do you have the 1951 book? (247) A. I do not.

Q. How did you make out your 1951 tax return without the 1951 book? A. I didn't have it.

Q. Will you answer the question, sir? A. I don't know how I made it out, but I made it out.

Q. Did you reconstruct it from memory? A. No, I did not.

Q. What record did you use? A. I don't have the records now.

Q. Where are those records? A. I don't know.

Q. Were they turned over to the Government? A. They were, one time.

Q. Did you ever get them back from the Government? A. I don't remember.

Q. But they were included in the records that you turned over to the Government, is that right? A. I don't know what I turned over to the Government just now. I have to look at the receipt.

Q. Look at the receipt, sir.

The Court: Have you got the receipt here?

Mr. Bolan: Shall we mark it for identifica- (248) tion?

The Court: All right, mark it.

The Clerk: Government or defendant?

Mr. Bolan: Defendant.

(Marked Defendant's Exhibit C for identification.)

Q. Looking at that receipt, Mr. Ford, is your recollection refrshed as to what you turned over to the Government? A. Yes.

Joseph E. Ford—Recalled—for Government—Cross

Q. Will you tell us what you turned over to the Government? A. This is dated June 10, 1954. (Reading) 1. Check for $800 dated March 17, 1947. 2. Check for $15 dated March 19, 1947. 3. Check for $75 dated March 19, 1947. 4. Check for $1300 dated March 16, 1948. 5, Check for $100 dated April 20, 1948. No. 6, check for $1600 dated March 18, 1949. 7. Check for $1600, dated March 16, 1950. No. 8, check for $100, dated March 24, 1950.

Q. That is all, sir? A. That is all.

Q. Didn't you tell us just a moment ago that you turned your books over to the Government? (249) A. I thought that I had until I saw this receipt.

Q. Is this the first time you have seen the receipt, in how long? A. I kept it with me all the time.

Q. When did you give it back to Mr. Bolan? A. This morning.

Q. How early this morning, Mr. Ford? A. Oh, after nine.

Q. Can you tell us the occasion of your giving your receipt to Mr. Bolan? A. I brought them in and I turned them over to the Government.

Q. They received everything? A. Everything.

Q. So that until Mr. Bolan produced it you had no record of what you had turned over to the Government? A. Mr. Bolan produced what?

Q. The receipt. A. Until——

Q. He produced it from his wallet. A. I didn't read it. I didn't read it.

Q. Didn't look at it at all? A. I didn't read it.

Q. You just took it out and handed it to him (250) this morning before you came to court? A. That is right, sir.

Q. The subject under discussion with Mr. Bolan were your books and records, do you recall? A. That is right.

Q. You recall also that on Friday you were asked about a receipt for your books and records, isn't that right? A. That is right.

Q. And this morning when you were discussing your testimony here concerning your books and records with Mr. Bolan, you produced the receipt, is that right? A. I gave him the receipt.

Q. Tell me, Mr. Ford, looking at—what books do you have? I am sorry. A. 1948.

Q. And was the business done in 1949 approximately the same as that done in 1948? A. Approximately.

Q. Any significant variation? A. No.

Q. Can you tell us then by looking at the 1948 book what the total amount of business was in 1949? A. I didn't add it up. The Government added it.

Q. What were the figures the Government came to?

The Court: 1948?

(251) Mr. Feldman: Yes.

A. 8,500.

Q. $8,500, is that right? A. Something like that, sir.

Q. What other book do you have? A. 1950.

Q. Can you tell us by looking at the 1950 book what the total volume of business was that you did in 1950? A. No, I can't, unless—around $10,000.

Q. Didn't the Government add that one up for you? A. I don't know.

Q. This is all from the book——

The Court: Just a minute. Do you know whether—

The Witness: I don't know whether they did.

Q. How long has the Government had them? A. How long has the Government had them?

Q. Yes. A. These books?

Q. Yes. A. About a week, I guess; I guess; I don't remember.

Q. Didn't you tell me just a moment ago, Mr. (252) Ford, that those are the books you brough down this morning to Mr. Bolan? A. No, I did not.

Q. Do you recall your testimony a few moments ago? A. I recall I told you I brought down the receipt, brought down my bank books, brought down some checks the Government has now.

Q. Do you remember telling me a moment ago that those books were the only records that you brought down because they were the only records that you could find? A. I didn't bring those down this morning. I brought down bank books, checks, and this receipt.

Q. You don't recall that testimony that I just related to you? A. I might have misunderstood you, sir.

Q. Did you misunderstand me on Friday when I spoke to you?

The Court: Ask a question. Let us not have argument.

Q. Now, looking at the type of book that you have there, Mr. Ford, do you recall ever seeing a similar type of book with the Government other than those which you have in (253) front of you, which are Ex- hibits C and D for identification? A. I didn't get the question.

Q. I am sorry.

Mr. Feldman: Mr. Reporter, will you read the question?

(Question read.)

The Court: What is Exhibit C and D for identification?

Mr. Feldman: Exhibit C and D, as I understand, it is the record of receipts——

The Court: No. They have not been marked for identification.

Mr. Feldman: For identification?

Mr. Bolan: May I clarify that? C is the receipt. But the books have not been marked.

The Court: C is the receipt for those checks.

Mr. Feldman: I apologize. May I have them marked D so that I can refer to them properly?

The Court: You mean the two books?

Mr. Feldman: Yes.

The Court: All right.

(Marked, Defendant's Exhibit D and E for identification.)

Q. Now, I will withdraw the last question and (254) will ask you again, Mr. Ford, do you recall in the discussions that you had with the Government from time to time seeing books similar to Exhibits D and E for identification in the Government's possession? A. Do I recall seeing similar books?

Q. Yes. A. No.

Q. Now, how many times have you discussed this case with people from the Government? I am talking about the Lennon case? A. Lennon case? Only with Mr. Bolan.

(255) Q. Never with Mr. Emanuel?

The Court: Never with Mr.——

Mr. Feldman: Emanuel.

A. Mr. Emanuel was not present.

Q. You only talked to Mr. Bolan? A. That is right.

Q. Mr. Emanuel never asked you a question? A. I don't recall.

Q. And you never answered a question? A. I don't recall.

Q. You don't recall anything like that? A. I don't recall.

Q. Now, did you discuss the Lennon case with Mr. Bolan either in Mr. Emanuel's presence, or at any time prior to your appearing on the stand in the Dodson case? A. No.

Q. Didn't discuss the Lennon case with him at all? A. Not at all.

Q. Did you discuss the Lennon case with anybody in the Government prior to your appearing in the Dodson case? A. I wasn't asked a question in the grand jury (256) room.

Q. And that is the only thing that you told, was the story of the checks, is that right? A. That is right.

Q. Nothing else? A. That is right.

Q. Nothing about this story at which you were allegedly present, is that right? A. That is right.

Q. Nothing about the particulars of your tax service, is that right? A. That is right.

Q. Nothing about the gross income of your tax service, is that right? A. That is right.

Q. Nothing about the expenses of your tax service? A. That is right.

Q. So that up until the Dodson case—now, do you recall when that was? A. Yes, I recall that.

Q. When was that? A. This year.

Q. When this year do you recall? (257) A. I don't recall the month.

Q. The month of June? A. I don't recall the month.

Q. All right, but it was some time this year, either May or June, or something like that, is that right? A. That is right.

Q. And up until May or June of this year, 1956, you never discussed the Lennon case with anybody in the Government, is that right? A. As far as I know.

Q. Is that right, sir? A. I don't recall ever.

Q. And the only thing that you ever discussed with anybody was your testimony before the grand jury for two minutes with regard to the checks, is that right? A. That is right.

Mr. Feldman: Now, does the Government have Mr. Ford's grand jury testimony available?

Mr. Bolan: Yes, it does.

Q. Now, Mr. Ford, can you tell us whether or not the story you told here in court and on Friday, of course, with regard to the checks was the same (258) story as you told the grand jury? A. As far as I can remember, sir.

Q. Well, do you recall precisely what you told the grand jury? A. They asked me what those checks represent and I told them.

Q. What did you tell them? A. Payment for services rendered to me by Mr. Lennon.

Q. And did they ask you what the services were for? A. They might have.

Q. You don't recall that? A. I don't recall that.

Q. Do you recall answering any question describing your tax service? A. I don't think I described it before the grand jury. I am not too sure.

Q. Now, can I ask you this, Mr. Ford:

Who asked you to appear before the grand jury? A. I was served with a subpoena.

Q. And prior to being served with the subpoena were you interviewed by an Assistant United States (259) Attorney? A. I think so.

Joseph E. Ford—Recalled—for Government—Cross.

Q. And during the course of that interview with the Assistant United States Attorney did you tell him that you had these checks? A. No, I did not.

Q. Well, how did he know enough to serve you with a subpoena? A. I was served with a subpoena because Mrs. Dodson testified that I made out her return.

Q. Are you saying now, sir, that the questioning from the grand jury was purely accidental at the time that you were there? A. I came in and talked with Mr. Pierce and he sent for me to come in.

Q. And when you talked to Mr. Pierce, he was an Assistant United States Attorney, wasn't he? A. That is right.

Q. And did you discuss with Mr. Pierce these checks that you had? A. I don't recall. I don't think so.

Q. Now, you left the tax service for the last time in 1951, or that was the last year you were at the church, is that right? (260) A. That is right.

Q. Now, but you made about $10,000 gross in 1951? A. Approximately.

Q. What was the average ever paid by a client for the tax service during 1951? A. Five or ten dollars.

Q. Would it be fair then to state, Mr. Ford, that you serviced about 3,000 taxpayers?

The Court: In what period?

Mr. Feldman: In the year or for the year 1951, that is, filed or filled out returns for them for the year 1951?

A. I have no idea of the number. I have a book here.

Q. And could you by looking at that book tell us approximately how many clients your tax service had without taking too much time? A. Do you want me to count them?

Q. Can you just glance at it, give us an idea of how many by just taking a glance at this book? A. I can count them for you.

Q. Well, do you recall being questioned in the Dodson case, Mr. Ford, about how many clients you (261) serviced? A. I don't recall that question, sir.

Q. And you used the figure of about 800 or 900? A. I don't remember.

Q. Well, would that figure be accurate, Mr. Ford? A. I don't know.

Q. Well, your average fee was what, sir? A. Five or ten dollars.

Q. Would you say seven and a half dollars was a fair average of the money that you took in from all your clients? A. Five and ten dollars.

Q. Would you say that seven and a half dollars was a fair average?

The Court: Wait a minute. When you get into mathematics and asking about the average you have to weigh it. He says the fees were five and ten dollars, so that does not mean that you have an average of seven and a half.

Q. Tell me this, Mr. Ford: Were there any $3 fees? A. The $3 fees for the State tax.

(262) Q. Whatever it was. A. And it is not included in this book at all.

Q. They don't apepar at all? A. No.

Q. Look in 1951, please, or 1950 is it? A. Yes.

Q. That is Exhibit E, isn't it? A. Right.

Q. Look at it? A. Yes.

Q. Are there any $3 fees there? A. I could find some here, $3.

Q. That is what I asked you. A. But I have done some that are free, too.

Q. And have you any for $3? A. I don't know. I will see if I can find a $3 one for you, yes.

Q. And you have looked at the very first page? A. Yes.

Q. Look at the second page? A. Yes, I find one.

Q. Look at the third page? A. Yes.

Q. So that some of your clients paid you $3 (263) and some of your clients paid you $5? A. Yes.

Q. And some of your clients paid you $10, is that right? A. Yes, and according to this some free also.

Q. And some were free? A. Yes.

Q. And the total cash that you took in was $10,000, is that right? A. That is right.

Q. And the total profits that you made, if I recall your testimony of Friday, was between 500 and $2,500 a year, is that right? A. That is right.

Q. Was 1950 a $500 year or a $2,500 year? A. I don't know.

Q. Well, you have the book in front of you. A. I have to add it up.

Q. That was the one the Government did not add up, that right? A. That is right.

Q. Well, did the Government add up the 1948 book? A. I think they did.

(264) Q. And 1948, you will recall, Mr. Ford, telling us was about the same as 1949? A. Eight thousand five hundred I think.

Q. For 1948? A. Yes.

Q. And you made a profit of between 500 and 2,500, is that right? A. I don't recall what the profit was.

Q. Well, don't you recall telling us on Friday that for each of the three years, 1949, '50 and '51 you made between 500 and 2,500 dollars profit? A. That is right.

Q. So that you would average expenses of somewhere between 7,500 and $9,500 a year, is that right? A. Something like that.

Q. Now Mr. Ford, when you left the tax service, you left in 1951, right? A. I did not leave the tax service.

Q. Well, you left the church? A. I left the church.

Q. Yes. Do you recall that? A. Yes.

(265) Q. And you opened up your own office for the 1952 tax returns, is that right? A. Yes.

Q. And your expenses for the running of this tax service was about between 7,500 and 9,500, is that right, Mr. Ford.

The Court: When?

Mr. Feldman: 1949, '50 and '51.

The Court: All right. You asked when he left the church and I want to make sure what you are talking about.

Mr. Bolan: I just would like to point out, your Honor, that the mathematics are not correct. He said that the gross was a maximum of eight and the profit was a minimum of 2,500, so the minimum figure would be 5,500 and not 7,500.

Mr. Feldman: I think the jury will do the necessary mathematics.

Mr. Bolan: Yes, but we do not want them mislead.

Mr. Feldman: Thanks a lot, Mr. Bolan.

Mr. Bolan: You're welcome.

Q. Did you tell us a moment ago, Mr. Ford, that the expenses were between 7,500 and 9,500?

(266) The Court: Of course, when you are asking different years and you talk about averages,

it is one of the worst things you can do, or one of the most misleading things.

Mr. Feldman: The unfortunate part of it is that we have no records by which we can go.

The Court: But the witness has stated that over a period of three years the profits ran between 500 and 2,500 on the average.

Mr. Feldman: Giving him credit for the larger and greater because I do not want to pin on one as against the other, your Honor.

The Court: All right.

Q. Mr. Ford, in 1952 you ran your tax service from your own office other than at the church? A. 1952?

Q. Yes. A. Yes.

Q. And in 1952 where was your tax office? A. 222 West 145th Street.

Q. And that was the same address as the ballroom? A. That is right.

Q. And, Mr. Ford—

The Court: Is that the same address as the Witoka Club?

(267) The Witness: The Witoka Club, yes.

Q. And tell me this, Mr. Ford: Did any of the people for whom you paid taxes in 1951 come to you to have you do their taxes in 1952? A. Some of them did.

Q. And is the same thing true for 1953? A. That is right.

Q. And in 1952 do you recall, sir, was your gross volume larger or smaller than that which you told us about in 1951? A. I don't recall.

Q. And in 1953 was it larger or lesser than that that you told us about in 1951? A. I don't recall.

Joseph E. Ford—Recalled—for Government—Cross—

Q. No recollection at all? A. None whatever.

Q. Did the profits remain about the same? A. I have no idea.

Q. No idea at all? A. None whatever.

Q. In the course of all of this, Mr. Ford, that is from 1949 through 1953 have you ever been audited by the Internal Revenue Service? (268) A. I have been.

Q. And as the result of those audits were you assessed additional taxes? A. I was not.

Q. When were you audited, Mr. Ford? A. I don't recall the last time.

Q. Was 1949 ever audited, your return for the year 1949? A. I don't recall now if it was.

Q. Was 1950 audited? A. I don't know.

Mr. Feldman: Has the 1950 return been found incidentally, Mr. Bolan?

Mr. Bolan: No, it has not.

Q. Now, was 1951 audited, Mr. Ford? A. I don't know. I have a copy here.

Q. Well, in preparing for your testimony in this case, Mr. Ford, were your tax returns analyzed by Mr. Emanuel? A. I did not prepare for this.

Q. You did not prepare for this at all? A. No. I was called in and asked a few questions and given a subpoena.

Q. And that is all, isn't that right? (269) A. That is right.

Q. Now, on what basis was Mr. Lennon paid by you? A. According to the amount of money that I made, the amount of money that I took in.

Q. Now, in 1949, which was the same as 1948, is that right— A. That is right.

Q. —you took in about $8,000, is that right? A. That is right.

Joseph E. Ford—Recalled—for Government—Cross

Q. And in 1950 I think it is that you have there, is that right— A. That is right.

Q. —you took in about $10,000? A. That is right.

Q. Now, how much money did you pay Mr. Lennon in 1949? A. I don't recall.

Q. And how much money— A. I paid him by check.

Q. —did you pay Mr. Lennon in 1950? A. 1950?

Q. Yes. A. $1,600.

Q. You don't recall what you paid him in 1949? (270) A. I have some checks here.

Q. You don't recall the amount of those checks?

The Court: You can refresh your recollection from the checks if you want.

The Witness: I can.

Mr. Bolan: Yes (handing papers to the witness).

A. March 18, 1949, $1,600.

Q. And you also know that by looking at the check, is that right? A. That is right.

Q. You have no recollection of paying Mr. Lennon except that you see the date on that check, is that right? A. Well, this is good enough for me.

Q. In other words, you are looking at the check and you are saying that if this is the check made out to Mr. Lennon that I must have paid it to him for services rendered? A. I had no other reason to give him $1,600.

Q. Mr. Ford, now listen carefully. Is your testimony concerning the fact that this check was paid to Mr. Lennon based on your own recollection (271) that you actually paid him, or purely based on your looking at the check and saying "I must have paid him"? A. No.

Q. Which is it? A. It is that I paid him.

Q. So that what you told us a moment ago is that you have a recollection of having paid him independent of the

check, is that right? A. I had to pay him. He worked for me and I had to pay him.

Q. But do you have a recollection of actually paying him? A. Yes, I do.

Q. And in your recollection of actually paying him, Mr. Ford, will you be good enough to tell us the formula that you used on your $8,000 of income so that you could arrive at the amount of $1,600? A. No, I can't tell you in that respect how I arrived at that position.

Q. Didn't you tell us that you had an understanding with Mr. Lennon to pay him? A. I had no understanding with him at all. He came to work for me and I paid him. No set amount was mentioned.

(272) Q. So there was no formula? A. No.

Q. It was purely what you decided to pay him? A. That is right.

Q. So that when you told us on Friday that there was—that you paid him in accordance with the amount that you got, that was not the formula, was it? A. That is my formula, yes.

Q. That was your formula, is that right? A. That is right.

Q. But you could not tell by looking at the amount of money that you took in how much you were going to pay Mr. Lennon? A. At the end of the season Mr. Lennon would give me a tape showing the amount of money taken in and I would give him a check.

Q. That did not happen in 1951, did it? A. It happened every year except 1951 when I had given him cash.

Q. Was it 1951, Mr. Ford, the year that the laundry man came to call at 5 or 6 o'clock in the morning? A. That is right.

(273) Q. And you turned on the light, is that right?

The Court: What is that?

Q. And you turned on the light in your bedroom so that you could go to answer the door for the laundry man? A. You remember that story, yes, sir.

Q. It was a good story, wasn't it? A. A good story.

Q. Isn't that right? A. Yes.

Q. And it was a funny one, too? A. Well, it was funny to me.

The Court: Well, let us move ahead with the case. Ask him another question.

Q. And isn't it a fact, Mr. Ford, that it was just that, nothing more than a story? A. No, that is not true either. That is a true story.

Q. The laundry man came at 5 o'clock and the money started to burn in the lamp after you turned on the light? A. Mr. Lennon knows that story because he framed it in the Amsterdam News.

Q. And everybody was laughing about it? (274) A. Everybody but me.

Q. And you went with the burnt money to the bank, is that right? A. That is right.

Q. Is that the first time that anything like that ever happened to you, Mr. Ford? A. The very first time.

Q. What? A. The very first time.

Q. And it stands out vividly in your mind? A. Yes, it does.

Q. And you could never forget it? A. No.

Q. What bank did you go to in order to turn in the burnt money and in order to get good money? A. The Chase National Bank.

Q. Where? A. Church Street, Worth and Church Street.

Q. Partly burned, was it, this money? A. Not too badly burned. All the serial numbers were there.

Joseph E. Ford—Recalled—for Government—Cross

Q. And about how much money was there? A. I don't recall.

Q. You had hidden this money—where was this (275) lamp? By the way, I don't think you told us that. A. In my den.

Q. In your den? A. Yes.

Q. That is at 2171 Madison Avenue? A. Yes.

Q. Now, 2171 Madison Avenue is how big an apartment there? A. Four rooms.

Q. How many bedrooms? A. Two

Q. And which was the den? A. That is where I slept, in the den.

Q. And one of these bedrooms was used as a den? A. Yes.

Q. And the other bedroom was used by Mrs. Ford? A. Yes, that is right.

Q. And you were sleeping alone in the den? A. That is correct.

Q. And Mrs. Ford was sleeping in the bedroom? A. Yes.

Q. The doorbell rang at five or six o'clock in the morning? A. That is right.

Q. And you put on the light? (276) A. That is right.

Q. And in going to answer the door— A. I started to answer the door, yes.

Q. And when you answered the door, the laundryman was there? A. Mrs. Ford answered the door.

Q. Mrs. Ford answered the door? A. Yes.

Q. And you then came back and went to sleep? A. Went asleep.

Q. And you left the light still burning? A. Yes.

Q. Tell me this: How long had that money been in the lamp? A. Overnight.

Q. You just put that money in the night before? A. That is right.

Q. Where had you gotten the money from? A. Mr. Lennon.

Q. Were these the night's receipts? A. The night's receipts, and some I had around there hidden. I had moved it from one hiding place, and I had to find another, and so I put it in the lamp this time.

Q. And you were hiding it from the place where (277) Mrs. Ford would clean, is that right? A. I was hiding it from the place where she might find it.

* * * * *

(278) *By Mr. Feldman:*

Q. Mr. Ford, at the time of your direct testimony you made mention of the fact that you had a political disagreement with Congressman Powell, and that was the basis of your leaving the church? A. That is right.

Q. Now, you left the church when, sir? A. August of 1951.

Q. And when you use the expression "left the church," you refer to the fact that you disassociated yourself with Congressman Powell, is that right? A. That is right.

Q. And with the associates of Congressman Powell, is that right? A. Yes, that is right.

Q. And in 1951 you went out on your own; that is, independent of Mr. Lennon and Congressman Powell and others who had been associated with the Congressman, is that right? A. That is right.

(279) Q. You were the Democratic district leader, is that right, sir? A. That is right.

Q. And your political career progressed to the point, sir, did it not, where you became a Democrat who supported the Republican candidates, is that right, sir? A. Yes, one year.

Joseph E. Ford—Recalled—for Government—Cross

Q. And what year was that, sir? A. I think it was 1953.
Q. That was the election campaign of 1953? A. Yes.
Q. And it was——

The Court: What was that, a mayoralty campaign or what?

The Witness: No, I organized Democrats for Ives.

The Court: Democrats for Ives?

The Witness: Democrats for Ives when he ran for governor.

Q. And you ran that in Harlem, did you not? A. I did.

* * * * *

(295) Q. Mr. Ford, do you recall being asked on Friday whether or not you had ever made a statement under oath that the only income that you ever had was from your job? A. I don't remember.

Q. Do you recall also being asked whether or not you had ever stated under oath that you were in financial difficulties? A. I don't recall that.

Q. Mr. Ford, I show you this paper and ask you whether or not you recognize your signature? A. I do.

Q. Is that your signature? A. It is.

Q. Did you swear to it before a notary public? A. That particular document was——

Q. I asked you whether or not you swore to it (296) before a notary public. A. Evidently I did. Do you want me to explain what that is?

The Court: No, just wait for the next question.

Q. Mr. Ford, going to the same document, I ask you to look at the document now. There is your signature and I

ask you to look at it and ask you if you recognize it as an affidavit made by you. A. This is the affidavit.

Q. And was it made by you or wasn't it? A. This affidavit was drawn by my lawyer.

Q. Was it made by you? Did you sign it? A. Drawn up by my lawyer and he said to come in the office and sign these papers.

Q. And you don't know what you signed? A. I don't think I ever read it.

Q. All right. Did you sign it and swear to it? A. That is my signature.

Q. And is that your affidavit? A. I will have to read it.

Q. Please do. A. This is an affidavit drawn for me——

Q. I didn't ask you to tell what it is. (297) A. I am trying to tell you——.

The Court: Ask him if it was his affidavit. Go ahead and give your answer.

Mr. Feldman: May I have it?

The Court: No, what is your answer? Is that your affidavit?

The Witness: My answer is that my lawyer drew this affidavit and I signed it.

The Court: You signed it and swore to it?

The Witness: Yes.

The Court: Did you read it before you signed it?

The Witness: I did not read it. I didn't even finish reading it just now, just glanced at it.

Q. You didn't finish reading it just now? A. No.

Q. I see. Do you want to finish reading it? A. No, I don't want to take the Court's time to read it.

Q. Mr. Ford, do you recall or would it refresh your recollection if I told you that in this affidavit dated——

Joseph E. Ford—Recalled—for Government—Cross

The Court: You are starting an objectionable question.

Mr. Feldman: I realize that I am and I will (298) withdraw it.

The Court: All right. Ask it in the proper form. He says he signed the document.

Mr. Feldman: Your Honor, I will offer it in evidence at this time.

Mr. Bolan: I object. I do not see where it has any relevancy.

The Court: Let me look at it.

Mr. Feldman: I draw your Honor's attention to the third paragraph.

The Court: Do you want to offer it particularly for the third paragraph?

Mr. Feldman: I do, sir, and I do not want it for the balance of it.

Mr. Bolan: May I read it, your Honor? I have not seen it.

The Court: Yes.

Mr. Bolan: Your Honor, I do not see that it is in any way inconsistent with what this witness has testified to.

The Court: If Mr. Feldman wants it, we will receive it in evidence as Defendant's Exhibit F, and the Clerk will then give it back to him after it is marked.

(299) Mr. Bolan: As to that paragraph?

The Court: No, we will take the whole thing.

Mr. Bolan: All right.

(Marked Defendant's Exhibit F.)

The Court: This is an affidavit which was executed by Mr. Ford in connection with an applica-

tion to commit him for failure to pay an instalment of alimony.

Mr. Feldman: Apparently, sir.

Mr. Bolan: What is the date?

Mr. Feldman: The date of the affidavit is October 13, 1950.

With the Court's permission, may I read a portion of the affidavit to the jury?

The Court: Yes.

Mr. Feldman: This is an affidavit, ladies and gentlemen, in an action in the Supreme Court of the State of New York entitled Lurline Tobin Ford, Plaintiff, v. Joseph E. Ford, Defendant.

The affidavit is that of Joseph E. Ford, the witness, and it is dated October 13, 1950, and I would read to you the following:

(Mr. Feldman then commenced reading with the words: "That deponent fully respects the order of this (300) court directing him to pay alimony in the sum of $22.50 a week," and ending with the words: "That deponent's defection at the moment is because of his temporary financial embarrassment and not because of any act or desire on his part.")

Q. Now, Mr. Ford——

The Court: Wait a minute. Wait a minute. You had better read the rest of that.

Mr. Feldman: Certainly. I will read the whole thing.

The Court: I mean to give the whole picture of what that paragraph is.

Mr. Feldman: Yes, sir.

(Mr. Feldman thereupon read the balance of the paragraph in its entirety.)

Mr. Feldman: Shall I go on, your Honor?

The Court: Yes. That is all right now.

(301) Do you recall being cross-examined on Friday as to whether or not you ever made a statement under oath that the only income that you had was from your job at the—working for the City of New York? A. I said I didn't recall.

Q. Well, Mr. Ford, I show you this document and ask you whether or not that is your signature? A. That is my signature.

Q. Don't you want to look at it first? A. I see it.

Q. And you swore to your signature before a notary? A. I did.

Q. Do you recognize this document for what it is, sir? A. I do.

Q. It is an affidavit in the same action that I have just read to the jury, the action of Lurling Tobin Ford v. Joseph E. Ford? A. I do.

Q. Is that right, sir? A. That is right.

Q. Now this affidavit was sworn to on January 9, (302) 1951; is that right, sir? A. That is right.

Q. And on January 9, 1951, Mr. Ford, you were running your tax service? A. January 9th?

Q. 1951? A. Yes.

Q. And you have your job with the Commissioner of Elections? A. That is right.

Q. And you had this ballroom at the Witoka Democratic Club? A. No, I had no ballroom.

Q. You had no ballroom at that time? A. That was the Democratic Club.

Q. Was it ever used as a ballroom? A. Dance—

The Court: Wait a minute. The witness is saying that was not his; it was the Democratic Club of which he was leader.

Q. Did you ever operate the ballroom out of these premises and collect fees for its use? A. I never did.

Q. The club did? A. That is right.

(303) Q. But you paid the expenses? A. That is right.

Q. Did the money go into the club account? A. It went into—what money?

Q. The money that you received for the rental of the ballroom? A. It was very little.

Q. Whatever it was, into whose account— A. It was no account.

Q. Who pocketed the money? A. I pocketed it.

Q. Right. Mr. Ford, that was all on January 9, 1951, is that right? I mean, January 9, 1951 covers this period we have just been talking about, is that right? A. Yes.

Mr. Feldman: I offer this in evidence, and I respectfully draw the Court's attention to the first complete paragraph on page 3 (handing).

The Court: Have you seen this, Mr. Bolan?

Mr. Bolan: No, sir, I have not.

(The Court hands to Mr. Bolan.)

Mr. Feldman: I am offering the entire affidavit.

(304) The Court: Any objection, Mr. Bolan?

Mr. Bolan: No, your Honor, I see no objection.

The Court: All right. I will receive it in evidence. This is an affidavit made by Mr. Ford in opposition to a motion by his wife's attorney for additional counsel fees. Received in evidence.

(Defendants' Exhibit G received in evidence.)

Mr. Feldman: Your Honor, with the Court's permission, may I read a portion of this?

The Court: Yes.

Mr. Feldman: I won't repeat that which you just heard from the Judge. This is Mr. Ford's affidavit. I am reading from page 3 of this affidavit.

Mr. Bolan: May we have the date too, Mr. Feldman?

Mr. Feldman: Oh, yes. The date of the affidavit is January 9, 1951. "And that the defendant"—that is Mr. Ford—"on the other hand has only the income from his job and is presently barely maintaining himself while he endeavors to make his alimony payments current."

Q. Mr. Ford, do you recall that on Friday (305) I asked you what your take-home pay was from your job at the Commissioner of Elections? A. That is right.

Q. And you said you didn't recall? A. That is right, sir.

Q. Now I show you this document, Mr. Ford, and I ask you whether or not that refreshes your recollection as to what your take-home pay was? A. Yes. Approximately $68 a week.

Q. Right:

Mr. Feldman: I have no further questions.

The Court: Any redirect?

Mr. Bolan: Yes, a few, your Honor.

Joseph E. Ford—Recalled—for Government—Re-direct

(307) Q. Now, Mr. Ford, the years 1949, 1950 and 1951 were not the only years that you paid Mr. Lennon for his services in assisting you at the tax service; is that correct?

Mr. Feldman: Objected to.

A. That is correct.

Mr. Feldman: If your Honor please, that is objected to and I ask that the answer be stricken. The only relevancy here is 1949, 1950 and 1951.

Mr. Bolan: Your Honor, may——

The Court: Those are all the years which have been introduced in evidence so far. Now you are going into other years?

(308) Mr. Bolan: I would like to go into the two prior years because there has been considerable cross-examination on those prior years.

Mr. Feldman: The Government is bound by its own bill of particulars as to what its claim was.

Mr. Bolan: I am not claiming that there was any tax evasion for those years. I want to establish the pattern of payment by Mr. Ford throughout the time Mr. Lennon worked for him.

The Court: On that basis then I will allow it.

Mr. Feldman: Exception, your Honor.

Q. Now, Mr. Ford, do you recall what you paid Mr. Lennon for his service in the year 1948? A. I do not.

Q. I show you Government's Exhibit 8 for identification and ask you if that refreshes your recollection as to what you paid him? A. Yes, it does.

Q. How much did you pay him in 1948? A. March 16, 1948, I have a certified check for $1,300.

April 20th, I have another check for $100. That is $1,400.

(309) Q. Do you remember why the check was certified?

Mr. Feldman: Objected to, if your Honor please.

The Court: Wait a minute.

A. The check was certified for the same reason that I——

Mr. Feldman: Your Honor——

The Court: You object to the question as to why the check was certified?

Mr. Feldman: That is right.

The Court: On what ground?

Mr. Feldman: It is calling for the operation of the witness' mind, does not elicit any fact at all; he can make up any story he wants to in response to a question like that.

The Court: The mere fact that a person can make up a statement does not mean that it is an objectionable question. Any question calls for the operation of a man's mind.

What do you mean by your objection?

Mr. Feldman: It is not probative of any fact at all in this issue.

The Court: You are making another objection. You withdraw the other objection, is that it? (310) You are making another objection that it is not probative. Is that what you are making now?

Mr. Feldman: I am making both, if your Honor please.

The Court: I certainly overrule the first one. And the second one you are objecting to the question as

to why the check was certified on the ground that it is not probative.

Mr. Feldman: Of the issue in this case.

The Court: They were not offered, as I understand, to prove any tax evasion in these years. They are offered simply to show pattern in some previous years. Your objection is overruled.

Mr. Feldman: Exception, your Honor.

May I point out to the Court that there is nothing about certification which establishes the pattern one way or the other.

The Court: You stated your objection. I have overruled your objection. You can't jump from objection to objection to objection, you know, and have this dialogue go on forever.

What is your next question?

Q. What was the answer to that, Mr. Ford? As to why this check was certified?

(311) A. That check was certified for the same reason that I endorsed the others.

Q. What was that? A. Because Mr. Lennon had no account at the bank, and while I was at the bank one day I got this check certified so he wouldn't have no trouble cashing it.

The Court: Did he ask you to do it?

The Witness: No, I did it on my own.

Q. Do you recall how much you paid Mr. Lennon in 1947 for his services? A. No, I do not.

Mr. Feldman: The same objection, your Honor, and I presume the same ruling.

The Court: The same ruling.

Mr. Feldman: The same exception.

Q. I show you Government's Exhibit 7 for identification and ask you if that refreshes your recollection as to how much you paid Mr. Lennon for his services in your tax service in 1947? A. Yes, it does.

Q. How much did you pay him? A. March 17, 1947, $800. March 19, 1947, $15. March 19, 1947, $75. That is $890.

(312) Mr. Bolan: Your Honor, I offer Government's Exhibits 7 and 8 in evidence.

The Court: The witness' recollection has been refreshed by them. He has testified that he paid those amounts in those years to Mr. Lennon for services in connection with the tax matter. Those years are not involved in this indictment.

Mr. Bolan: I will withdraw the offer.

The Court: All right. They will not be received in evidence, except the testimony purely as showing a pattern of conduct that may have some relevancy as to the years involved in the indictment.

Q. Mr. Ford, looking at Defendant's Exhibit B for identification, are you able to state positively how much you grossed from your tax service for the year 1951? A. Grossed $10,000.

Q. Are you able to state positively how much money you paid out in salaries for your tax service in that same year? A. Yes, I am.

Q. How much? A. On line 4——

(313) Q. No. How much? A. $3,300.

Q. For salaries? A. Salaries I have 2,500, then for labor I have $800.

Mr. Feldman: For what? I am sorry.

The Court: "Labor."

Mr. Feldman: "Label"?

The Witness: Labor.

Mr. Bolan: I have no further questions.

The Court: Do you have any further questions, Mr. Feldman?

Re-cross Examination by Mr. Feldman:

Q. What did you gross in 1947 from your tax service? A. I don't remember, sir.

Q. What did you gross in 1948? A. I don't recall, sir.

Mr. Feldman: No further questions.

The Court: All right. The witness is excused. We will now recess.

Mr. Feldman: If I may, your Honor:

By Mr. Feldman:

Q. Mr. Ford, did you ever give anybody a check (314) to cash for you? A. Sure.

Mr. Feldman: No further questions, your Honor.

The Court: No further questions?

Mr. Bolan: No, your Honor.

The Court: All right, you are excused.

(Witness excused.)

The Court: It is time for the luncheon recess. The Court will stand recess until two o'clock.

(Recess to 2.00 p.m.)

Heinrich Ludeke—for Government—Direct
Heinrich Ludeke—for Government—Cross

(447) Mr. Bolan: The Government calls as its next witness Mr. Heinrich Ludeke.

HEINRICH LUDEKE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Bolan:

Q. Mr. Ludeke, what is your occupation? A. I am employed by the Chemical Corn Exchange Bank in 311 Lenox Avenue as chief clerk.

. . . . . .

(466) *Cross-Examination by Mr. Feldman:*

Q. Mr. Ludeke, looking at the records, and we do not have to dig them out again, and I think you will recall this a bit by now, and you do, don't you? A. Yes, sir.

Q. Yes. Was this a corporation account or an individual account? A. A corporation account.

Q. And who were the persons who were authorized to draw money out of that account? A. Any two mentioned on that signature card.

Q. In other words, either Mr. Powell, Mr. Jackson, Miss——

The Court: Jones or Perry?

Q. —Miss Jones or Miss Perry?

Mr. Bolan: No, your Honor. The card shows any two of the names, that is, of the president, treasurer or co-treasurer.

The Court: All right.

Mr. Bolan: Which would be Mr. Powell, Mr. Jackson, or Mrs. Perry.

The Court: Yes.

Mr. Feldman: I see. That is all right.

Q. Now, Mr. Ludeke, do you know Mr. Lennon? (467) A. By name. I might have seen him in the bank, but I don't know him.

Q. If Mr. Lennon came to you and presented to you a check drawn on the Tenants Protective Association, Inc., and signed by him, would the bank have honored the check? A. May I again make clear one point on that?

Q. Surely.

Mr. Bolan: I object to that question, your Honor. It is too broad.

The Court: I think it is perfectly proper.

The Witness: May I get clear on one point?

The Court: Yes, but it seems the witness does not quite understand something about it. What is your problem?

The Witness: My problem is this: Any check to be cashed has two sides. In other words, your Honor, I could pass on the front of the check and then——

Q. I can clarify that for you, Mr. Ludeke. I might have confused you. A. All right.

Q. What I am saying is this, or what I meant to say was this: A check being presented to the (468) bank in the place where the officer would sign it. In other words, I am not going to the bank with the check to be cashed, but suppose a check, or the Tenants Protective Association's check was signed only by Mr. Lennon, drawn only by Mr. Lennon, would the bank have honored that check? A. No

Mr. Feldman: I have no further questions.

The Court: Any further questions, Mr. Bolan?

Mr. Bolan: No, your Honor.

Mr. Feldman: Oh, I am sorry, sir. I think I omitted to ask one question, but if I did, your Honor will please correct me.

The Court: Go ahead.

By Mr. Feldman:

Q. As far as the bank was concerned, Mr. Ludeke, was this a corporation account or an individual account?

The Court: He said it was a corporation account.

A. A corporation account.

Q. Was there a resolution on file? A. Yes.

Q. Would the bank have kept or handled a corporate account without a corporation resolution (469) authorizing the bank to issue monies in accordance with that signature card and the resolution? A. Would you repeat that?

Q. Surely, Mr. Ludeke. Would the bank ever purely on the signature card honor checks drawn by the persons who appear on those signature cards without a resolution from the corporation with the corporation's seal on it authorizing the bank to do so? A. No, we have the signature card and the resolution in the case of a corporation both on file and, of course, as far as the cashing and handling of checks is concerned, the staff of the bank goes strictly by the signature card.

Q. I understand. In other words— A. We don't refer to the resolution every time a check comes in.

Q. You don't refer to the resolution? A. We don't always refer to the resolution.

Q. Actually the signature card is used, and that is necessary if you don't recognize the signature to compare the signature on the check with the signature on file with the bank? A. Yes.

Q. So that the bank would know that the check (470) is properly signed? A. That is right.

Q. Isn't that right? A. That is right.

Q. Now, if you know, sir, when a person who does not have an account at the bank comes to the bank to cash a check, and let us assume that the check is certified, would the bank cash that check without requiring identification? A. As far as cashing any check is concerned, the bank assumes the responsibility to whom it is—for whom it is cashing the particular check. In other words, it is up to the discretion of the bank to establish the identification of the payee.

Q. Now, Mr. Ludeke, as a matter of custom at your branch, let us take this particular case, do you know who Paul Klein is? A. I have heard his name, but I don't know who he is.

Q. Now, if a Mr. Paul Klein came in with a certified check, did not have an account at your bank, and you were at the teller's window, what would you require? A. That I don't know. Mr. Klein, in other (471) words——

Q. That is right. A. Mr. Klein has no account, that is?

Q. That is right. A. I would not cash his check.

The Court: Would you cash a certified check?
The Witness: No.
The Court: Payable to him?
The Witness: No.
The Court: You would not?
The Witness: No.

Q. Suppose he identified himself satisfactorily? A. That all depends on the identification.

Q. That is right. In other words, if he identified himself and satisfied you that he was Paul Klein, you would cash it? A. If I am clearly satisfied——

Q. Right. A. —of his identification, then I have the right to cash it.

Q. And the amount of identification that you would require at any given moment would depend on the person in front of you? A. It all depends on the circumstances.

(472) Q. That is right. And at this moment, Mr. Ludeke, do you know or does anybody in the bank know whether Mr. Klein presented himself and identified himself and cashed the check? I am talking about the certified check we have under discussion now. A. No, I don't know.

Q. So that he could have or could not have? A. Right.

Mr. Feldman: I thank you.

Re-direct Examination by Mr. Bolan:

Q. But in any event, Mr. Ludeke, the fact that the check was cashed indicates that somebody identified himself as Paul Klein, is that right? A. We surmise that because we have no record of a deposit of this particular check, so we surmise that the check was negotiated over the window.

Q. Yes? A. But I wouldn't know the circumstances and particulars of this particular transaction.

Q. But you are able to say, though, that the check was either paid to Paul Klein or someone who represented himself as Paul Klein? A. Most likely so, yes.

(473) *Re-cross Examination by Mr. Feldman:*

Q. Mr. Ludeke, if I may, sir, how long have you been with the bank up at 311? A. 29 years.

Q. 23 years? A. Yes.

Q. Let me ask you this: You are not at the teller's window? A. Not at the present time, no.

Q. But you were at one time? A. I have been.

Q. How many tellers do you have up there? A. There are, of course, averages.

Q. It varies. A. But let us say five.

Q. Do those tellers know Mr. Lennon, so far as you know? A. Some of them may.

Q. Do you know Mr. Lennon? A. The gentleman over there? I have seen him in the bank.

Q. Do you know his name? A. Well, you say he is Mr. Lennon.

Mr. Feldman: No further questions.

(1474) *Re-direct Examination by Mr. Bolan:*

Q. How long were you a teller, Mr. Ludeke? A. I would say from 1944 until '52, roughly. I would have to look up my record; I can't tell you exactly.

Mr. Bolan: No further questions.
Mr. Feldman: No further questions.

New York, October 15, 1956,
10:30 o'clock a.m.

Trial resumed.

The Court: You may call your next witness.

Mr. Bolan: The Government calls as its next witness the Rev. Adam Clayton Powell, Jr.

Adam Clayton Powell, Jr.—for Government—Direct.

ADAM CLAYTON POWELL, JR., called as a witness on behalf the Government, being first duly sworn, testified as fol s:

Direct Examination by Mr. Bilowit:

. Dr. Powell, are you connected with the Abyssinian tist Church? A. I am, sir.
. What is your position there? A. Minister.
. How long have you been a minister? A. Twenty- years.
. And you are also a Congressman from New York , is that right? A. Yes, sir.
576) Q. For how long? A. Twelve years.
. And from which district? A. The 16th Congressional
. You, of course, know the defendant Acy Lennon, is right? A. Yes, sir, I do.
. He is a Congressional secretary to you, is that right? Yes, sir.
. And for how long has he been in that position? A. out ten years.
. Now, Dr. Powell, has any pressure in any manner, pe or form, directly or indirectly, been put on you by White House or anybody in the United States Govern t in connection with this case?

Mr. Feldman: Your Honor, I object, and I think it is the back door introduction of trying to inject an extraneous issue in this trial. So far as I know this is a tax evasion trial and not a political arena.

The Court: This is purely a tax evasion trial and there are no politics going to enter into this case as long as I am sitting on this Bench. This is purely a question of whether the defendant is guilty of evading (677) taxes as set forth in the indictment.

Discussion

You called the witness, Mr. Bolan, and I will sustain the objection.

Mr. Bolan: Your Honor, may I be heard on that?

The Court: I will sustain the objection at the present time. If later on the question becomes appropriate, I will allow it. Go on with the evidence in the case.

* * * * * *

(Witness excused.)

(915) Mr. Bolan: I have no further witnesses, but I would like to read a portion of the Government's Exhibits 1 to 4 to the jury.

The Court: The tax returns?

Mr. Bolan: The tax returns.

The Court: All right. You may pass them around, of course, and point out the things that you have in mind, but do not read the whole tax returns.

Mr. Bolan: No, I just have one particular item and I will pass the returns around.

The Court: All right.

Mr. Bolan: I call your attention to the part in the return which requires a listing of dependent relatives.

For example, on the 1949 return, we have "Names of other dependent relatives," and we have listed under that Barbara, Della, Acy, Jr. and William.

And in the next column we have "Relationship," and then there is daughter for Barbara, daughter for Della, son, Acy, Jr., and son for William.

Then we have a third column for the address, and I call your attention to the fact that on each of the returns there is a blank space next to Acy, Jr., (916) son, and William, son.

Mr. Feldman: Your Honor, that is inaccurate. There is also a blank space next to all of them.

Mr. Bolan: That is right.

The Court: In other words, if the dependent relative does not live in the same house as the taxpayer, the return instructs you to fill in the address of the dependent relative, but if he or she lives in the same house then it is not necessary to fill in the address.

Anything further?

Mr. Bolan: No, your Honor, that is all. The Government rests after the jury has had a chance to examine the returns.

The Court: All right, and do you wish to make some motions, Mr. Feldman?

Mr. Feldman: I do, your Honor.

The Court: How long will you take in making your motions? How long do you anticipate it will take you to make your motions?

Mr. Feldman: It will be quite some time. A lot depends on how many questions the Court asks, as the Court well knows, and I don't know how much time will be involved.

The Court: Well, I want to allow sufficient (917) time for you to put your motions on the record as fully as you need, or as much time as you need to dispose of it.

Mr. Feldman: Yes.

The Court: And that should be done in the absence of the jury, of course, under the rules, so we will adjourn until two o'clock this afternoon so far as the jury is concerned, and I will hear your motions in the robing room, and then we will resume the trial at two o'clock this afternoon.

Discussion

Mr. Feldman: May I have two or three minutes' recess at this point before we join the Court in the robing room?

The Court: Surely, and the jury will return at two o'clock, and then Mr. Feldman will be prepared to proceed with the trial at that time.

Mr. Feldman: Yes.

The Court: All right, the jury is excused until two o'clock. If you want to examine the returns, you do not need to leave now, just sit here and look at them.

It is about time that the jurors got a chance to look at these exhibits, I think.

A Juror: Your Honor, on the returns, there are two sides to each return; are we only to look at the (918) dependency list now?

The Court: No, you can look at anything you want. All of the returns are before you and they are all important in this case.

Mr. Feldman: Your Honor, I take it that there would be no objection if I am permitted to leave the room?

The Court: You can leave the room now and return to the robing room in about five minutes or so, and then I will hear your motions.

Mr. Feldman: Good enough, sir.

(The following proceedings took place in the robing room:)

Mr. Bolan: We were waiting for the jury to get through looking at the returns, your Honor.

The Court: And they have left now?

Mr. Bolan: Yes, sir.

The Court: Mr. Feldman, you may proceed.

Discussion

Mr. Feldman: Your Honor, the first motion I should like to make would be to strike the testimony of the witnesses Kent, Klein, Anna C. Perry, Harrison Jackson, Adam Clayton Powell, Hanley Bulson, as not being material, relevant or pertinent to the issues in the case.

(919) The Court: You want to strike out all of their testimony, or only their testimony about this amount of——

Mr. Feldman: $1500.

The Court: —$1500?

Mr. Feldman: That is right.

The Court: Because I think some of these witnesses testified to other things which may be helpful to one side or the other.

Mr. Feldman: That is right.

The Court: Therefore, I would not consider striking all of their testimony. I will consider your motion, therefore, about striking the testimony with reference to the $1500.

Mr. Feldman: That is right.

The Court: Which is alleged to be commissions on the sale of the apartments.

Mr. Feldman: On the sale of the apartments; yes, sir.

The Court: Mr. Bolan, what do you say as to that?

Mr. Bolan: Your Honor, I vigorously oppose such a motion. The question here is whether the income received from Mr. Kent was partially Mr. Lenton's, or (920) whether it was entirely that of the Tenants Protective Association.

Now, it is the Government's position that the Tenants Protective Association served as a mere conduit for this income received from Mr. Kent, and——

Discussion

The Court: None of that was proved to have gone personally to Mr. Lennon, was it?

Mr. Bolan: Yes, your Honor, that is correct, but if I may say there are numerous cases which hold that it is not necessary for the taxpayer to receive the income, it is not necessary at all, and I have numerous citations to that effect.

The Court: Well, in this case the evidence was by Mr. Kent that he made an arrangement that if Mr. Lennon or Mr. Hampton would sell these apartments he would make a payment to the Tenants Protective Association.

The testimony was that after the apartments were sold he made a payment of $3,000, and this went into the account of the Tenants Protective Association. There is other testimony which, if is believed, to the effect that the $3,000 then was paid out to Mr. Klein.

(921) There is no testimony that any of it ever went to Mr. Lennon. There is no testimony that Mr. Lennon was himself receiving the money, or that the people who paid the money understood that Mr. Lennon himself was to receive the money.

Maybe the Tenants Protective Association violated the law in filing a return, or maybe they violated the law in paying the money out to Mr. Klein, but that is not the issue in this indictment.

The payment of the money to Mr. Klein, or whoever got the money, it certainly was not Mr. Lennon from any testimony that was involved in the case, was not made by Mr. Lennon himself and, according to the testimony, it was made by the officers or representatives of the Tenants Protective Association.

There was no more reason from the testimony in this case to say that Mr. Lennon controlled this

money than Mr. Hampton did, or that Congressman Powell did, or anybody else.

Under the circumstances I will grant the motion to strike out all testimony about the $3000 and remove that from the case.

(922) Mr. Bolan: Your Honor, may I be heard just on one point?

The Court: Yes.

Mr. Bolan: You say that there is no evidence that Mr. Lennon had controlled the $3000.

The Court: By himself.

Mr. Bolan: Well, that would be so in any case in which a corporation is involved, but Mr. Klein testified this morning that Mr. Lennon and Mr. Hampton told him when he met them, they said to him, "Don't you remember you came to us for a loan from Congressman Powell?"

The Court: Yes.

Mr. Bolan: And that they then proceeded to give him the loan through the Tenants Protective Association.

The Court: All the testimony was that it went through the Tenants Protective Association.

Mr. Bolan: Your Honor, that would be so if that were the case, but if that were the determining rule, then you could never conceivably convict a defendant for tax evasion where the money was received by the corporation, because it is obviously the corporation which pays it out, and if you are going (923) to say that Mr. Lennon personally did not pay it out, then obviously you could never get a taxpaper convicted, because it is the corporation which pays it out.

The Court: But the cases do hold that an individual may be held criminally responsible for money

received by the corporation, and those are cases where the corporation was merely a fictitious conduit for that individual, and in a situation where the money was paid to a corporation, or where the money was paid out by the corporation and not to the taxpayer, and it was paid out not by action of the taxpayer but by action of the people who controlled that corporation, but then I do not believe there is sufficient evidence to include that in this case, this being a criminal case, as income of the taxpayer.

I will strike out all evidence about that $1500.

Now, what other motion do you have?

Mr. Feldman: Your Honor, at this time I should like to move to renew my motion made before the trial began with regard dismissal of the indictment for failure to state a crime within the purview of the law here involved, and I will point (924) out to the Court that there is a mistake in the indictment which is not too serious, but it was improperly drawn in that in the last count, the sixth count, the 1954 count, it refers to 145(b) and, as a matter of fact, 145(b) had ceased to exist at that time, and the 1954 Code, which in effect I think is 7201——

The Court: Which was substantially the same.

Mr. Feldman: Which was substantially the same.

Well, I think there is not enough sufficiently as to that claim, your Honor, but I just point that out.

The Court: Well, I think the citation of the statute in the indictment, which is surplusage in effect, is not a material factor unless the defendant has been misled.

Mr. Feldman: Yes.

The Court: So, on that ground I will not——

Mr. Feldman: Not on that ground.

The Court: What other ground?

Mr. Feldman: That was just a collateral point of information to the Court that I was aware of the situation.

(925) The ground on which the motion was originally made is the same as now renewed, your Honor, and I think the Court has recalled it.

The Court: I can't see any basis for setting aside the indictment on the basis of the indictment.

Mr. Feldman: I respectfully except.

The Court: I deny the motion.

Mr. Feldman: I assume it is denied?

The Court: Yes. What is your next motion?

Mr. Feldman: My next motion is a motion made under 3616(a), and you recall I mentioned that motion to the Court before the trial began, or that is the motion that I made before the trial began, and I now make the motion again under 3616(b) or, rather, (a), your Honor, and so we have to go now to the law to find out about that, and we have a situation of filing a false statement to a Collector of Internal Revenue for the purpose of evading any payment or assessment, and the issue comes about in this fashion, your Honor:

All of the cases which have recently come about, where 3616(a) and 145(b) were considered, cases such as the Berra case, the Moran case, the (926) American Stevedoring case, and I am trying to recall all of those cases, your Honor, distinguish 3616(a) and 145(b) under a set of circumstances in which in addition to the alleged falsity of the return there were other overt acts.

With the exception of Judge Frank in the Circuit Court, none of the judges have apparently been

made aware of the import of the language in the Berra case, dealing with this question of an overt act, and if you go to the decisions rendered by Judge Hincks, by Judge Palmieri, by Judge Kaufman in the Dodson case and the like, we find that there is an almost complete ignorance of the factual situation which existed in all of the other cases.

The Court: Now, to what is this addressed? Is this on the statute of limitations?

Mr. Feldman: It is, your Honor.

The Court: And you say that the statute of limitations has run in this case?

Mr. Feldman: It has run on certain counts; it has not run on all of them, and the reason why I say that, your Honor, is this:

Bear in mind the proof adduced in the case, and taking as we must on a motion of this sort, the (927) best view of the Government's evidence, all the Government has been able to prove is nothing more than an act which could only be accomplished by the filing of a false return.

And we have a further complication. We have the dependency situation which exists in the first four counts.

Now, if we divorce the dependency situation from the other items in this count we can get a clearer picture of the motion that I am making.

With regard to the dependencies, your Honor, there is nothing involved in the case other than the making of a false return.

The Court: A false return would be intent to defeat and evade part of the income tax.

Mr. Feldman: Yes, but we have come squarely with regard to the dependency issue, we have come

squarely into the situation of competency by both the majority and minority of the Supreme Court in the Berra case; namely, that this is a situation where the only act is the filing of the false return.

The Court: Suppose you file a false return with intent to evade the income tax, isn't that also subject to Section 145(b)?

(928) Mr. Feldman: Well, the problem is this, that you now have from the language of the Court itself at this moment, you have now a complete section, that is, 3616(a). In other words, 3616(a) refers specifically to the making of a false statement.

The Court: And you say that he cannot be prosecuted on both?

Mr. Feldman: He can't be prosecuted on both under the traditional rule that the lesser crime controls.

The Court: Well, hasn't that been upset by the United States Supreme Court?

Mr. Feldman: No, sir, it has not. As a matter of fact, it is the Berra case which has pointed out the power for me to address the motions which I have to the Court.

Up until the Berra case the only decision we had was in the Dillon case, and in the Dillon case, your Honor, you again had the overt act, and you had the Court dealing with a situation where the attempt as distinguished from the intent, and this is very interesting because under the 1939 law, and 145(b) deals with that, deals with the attempt, whereas (929) 3616(a) deals with the intent, and the philosophy behind that is that, and we had a finding of the Court, and also actually from the tax philosophy point of view now, nobody ever successfully evades

taxes. He may not pay them but he does not successfully evade them, and so the only crime that you deal with in 145(b) is the attempt to evade taxes, and the crime that you deal with in 3616(a) is the intent to evade the taxes.

And that is the only case that I have come across, your Honor, where we deal with a situation, particularly the dependency situation, where we deal with a situation in which the only way in which the alleged evasion could be accomplished would be by the filing of a false return. No other act is involved.

The Court: Yes, but isn't that true in any case?

Mr. Feldman: No.

The Court: You file a false return with intent to evade the law, and then you come under Section 145(b)?

Mr. Feldman: No, that is just the point, and let me illustrate what I mean.

(930) The Court: Yes.

Mr. Feldman: You take the situation which has just been resolved, the $1500 situation, now, surely in addition to the filing of the false return there would have to be or there would be, assuming that the Government proves a case, there would be the receipt of the money, the secreting of the money, the forming and complexity of overt acts which would fall within 145(b), but in the case of the dependents, your Honor, you are dealing only with a situation where there is no overt act.

The Court: Isn't the overt act the mere reporting of the dependents with intent to evade the tax?

Mr. Feldman: No, under the cases, your Honor, as I understand them, the mere filing of the return is not the overt act.

The Court: No, or it has to be a filing with intent to evade?

Mr. Feldman: No. You see, we do not have the intent situation in 145(b) as we have the attempt to evade.

The Court: All right, the attempt to evade.

Mr. Feldman: The attempt to evade.

(931). The Court: Yes.

Mr. Feldman: And the attempt to evade has been found by the courts to be always the overt act.

In the Moran case he received bribes and he did not report it; in the American Stevedoring case there were shakedowns of shippers involved, and in the Dillon case there was income received and unreported.

The Court: And in this case you have in each one of the years income received and unreported.

Mr. Feldman: May I interrupt?

The Court: And in four of the years we also have the question of intent.

Mr. Feldman: May I interrupt, your Honor?

The Court: Yes.

Mr. Feldman: For the present you can't rule out Ford and dependencies. The dependencies and Ford have to be together for the purpose of making a case. Actually what has the proof been in this case? If things were much clearer for the Court and the jury, it seems to me that the grand jury should have issued a separate count for the dependents and then a separate count again for the Ford situation.

(932). Now, you can't say that the Ford situation relates to the dependencies any more than you say that the dependencies relate to Ford. The payment——

The Court: Just a minute. Are you saying fraud or Ford?

Mr. Feldman: Ford.

The Court: All right.

Mr. Feldman: And that the Government referred to in 1949, '50 and '51, the payments.

The Court: All right.

Mr. Feldman: I think that they have to be and must of necessity be considered separately.

The Court: Well, if the Government's proof is accepted by the jury, then in each one of these years there was income which was not reported, in four of the years I think it is, there was also the claim of the dependencies which the Government claims was improper, in that two of those persons were not dependents. Under these circumstances you have a situation where the defendant filed a return which the Government claims is incorrect, and that it was done with intent to evade the income taxes. I can't see much to that argument that you have there.

(933) Mr. Feldman: Well, I make it quite seriously, your Honor, and you realize that I do.

I point out to the Court that what the Court is doing is taking the year as a whole and saying is this defendant guilty of evading taxes for the prior year. But unfortunately, or fortunately, depending on how you view it, you are going to give, you have to give two separate issues to the jury, and then taking 1949, '50 and 1951, I imagine, although theoretically the question may be sustained on either of those or both, the situation may very readily arise where the jury will say, "We don't accept the dependency story, we don't think he evaded on the dependency story, but we do think he evaded on Ford," or vice versa.

Discussion

Now we run into this situation. I think the Court must know by some manner or means whether the jury's finding is on one or both.

The Court: Your contention is that if a person claims dependents on his return that he is not entitled to, he cannot be prosecuted under Section 145(b)?

Mr. Feldman: That is right.

The Court: Where is there any case that (934) says that?

Mr. Feldman: This is the first case in which such prosecution has been attempted to this point.

The Court: What is the difference between claiming a dependent who is non-existant and taking a deduction which is non-existant, such as taking charitable contributions which are non-existant? You say that that would be the same?

Mr. Feldman: I would say that substantially that would be the same, because it would be the simple act of writing something into the return with the intention to evade the tax, which is the language of 3616.

The Court: Then suppose he writes something in his return which is not a statement of his full income with an intent to evade. Why is that any different?

Mr. Feldman: For this reason, because in addition to that you have the taxpayer coming and receiving something and secreting it somewhere, to hide it from the Government.

The Court: That doesn't have to be proved in an income tax case; you don't have to prove that (935) he secreted it. But you have to prove that he got it and he didn't report it.

Mr. Feldman: That is the point. The proof that he got it and didn't report it is the proof that he secreted it.

The Court: You think a prosecution under 145(b) can be brought only in a case where the income was not reported but that if he overclaimed deductions, exemptions or anything like that, then he cannot be prosecuted under that section?

Mr. Feldman: I think so, sir.

The Court: Well, I don't agree with you on that. What is your next point?

Mr. Feldman: Exception.

The next point that I make, your Honor, deals with this question of dependency. And I move, if your Honor please, for a judgment of acquittal at the end of the Government's case in that the Government has not established a case sufficient for the Court to now conclude that a reasonable man couldn't have doubts concerning the innocence or guilt of the defendant in that particular issue.

The Court: That is not the issue which I (936) have to decide when I pass upon such a motion.

Mr. Feldman: Basically, that is the language of the issue.

The Court: The issue I have to decide is whether there is sufficient evidence to go to a jury. They have to decide the question beyond a reasonable doubt; I don't have to decide the question beyond a reasonable doubt.

Mr. Feldman: No, you don't have to decide the issue beyond a reasonable doubt. You have to decide whether there is sufficient evidence to go to the jury.

The Court: On which a reasonable man could reach a conclusion.

Mr. Feldman: Could reach a conclusion.

The Court: That is right. I understand.

Mr. Feldman: Now the bill of particulars is very specific in that it says there was a claim of false dependents. Nowhere in the indictment or in the bill of particulars is there any statement that the defendant was entitled to any lesser number of exemptions than he took.

Now it would seem quite clear to me that (937) before a man can be criminally prosecuted for taking an excess number of exemptions certainly the Government should take a position on that excess number of exemptions. In other words, to say that he was not entitled to six exemptions but only entitled to four. Because otherwise you run into this problem: You are having the Government come in and saying that he evaded his tax by the mere fact of taking false dependents when the plain proof required, in order for a criminal case to be sustained, would be that he was entitled only to so many exemptions.

The Court: He claims six; he took his own position that he was claiming six. The Government says that two of those are not proper and therefore evaded tax by claiming those. That is the issue of fact for the jury.

Mr. Feldman: What evidence has been presented? The only evidence that has been presented that the defendant was not entitled to—if we assume that there is any evidence at all concerning exemptions, and I submit to your Honor that there is not—that the only evidence that has been presented here, positive evidence in the Government's point of view, (938) is the statement by Joe Ford to the effect that

he knew the defendant, knew him well over a number of years. And then what did he say? Did he say that he knew of his own knowledge that the defendant did not have four children, that he only had two? No. The Court will recall, from reading the transcript, that Joe Ford's testimony was that he never heard——

The Court: How about the daughter's testimony?

Mr. Feldman: The daughter's testimony, if your Honor please, only strengthens the defendant's situation, because she says that living at home, she and her sister, she heard rumors, but she at no time said that he had no other sons.

The Court: She said they never had any sons living with them. She is a girl, I suppose, of 20 or so; she is in college. She never knew of any brothers. She had heard rumors of the illegitimate children. It seems to me that there is sufficient evidence there to go to the jury.

Mr. Feldman: I don't think there is, your Honor. As a matter of fact——

The Court: How could the Government ever (939) prove that a man had any illegitimate sons?

Mr. Feldman: The answer to that, your Honor, is this, that whether it could ever prove it or not is not our issue here. The issue here is, how did they attempt to prove the issue?

The Court: They don't have to prove it in this case. They presented proof that the member of the family never knew of any sons but heard rumors of them. Does that mean that the Government has to go out and examine everybody in the United States to find out if any of them are illegitimate sons of the defendant?

Discussion

Mr. Feldman: No.

The Court: What possible other proof would there be?

Mr. Feldman: Because the courts have to be realistic and know the sensibilities of the society in which they live. And in considering the evidence, and knowing that, your Honor, you must bear in mind that the Government here has made no attempt at all beyond a story of Ford.

The Court: And the daughter.

Mr. Feldman: And the daughter. He made no (949) attempt at all to establish the number of dependencies one way or the other.

The Court: But they have no power to compel the defendant to testify on the matter. The tax returns would indicate, on their face, that these two other dependents were living with the father. The daughter said——

Mr. Feldman: Only for certain years.

The Court: In those years, yes.

Mr. Feldman: No. You must bear in mind that during the course of those years there was a change. As I recall it, that in certain of those returns there wasn't even a return that he stated whether they were living with him or not.

The Court: In the return there is a space that if they live somewhere else, give their address. In certain years anyway.

Mr. Feldman: '49 has the requirement, your Honor. 1950 has the requirement. '51 I don't believe so.

Mr. Bolan: Yes, it does.

The Court: Just off the record.

(Discussion off the record.)

Discussion

(941) Mr. Feldman: There have been years in which that——

The Court: All of the years involved in this case and even up to the present time, you put the address of the dependent and whether you contribute more, have to contribute more than half of their support.

Mr. Feldman: But, your Honor, the question here —I am sorry.

The Court: The thing is that here there was proof that there were no such sons living at home, by the daughter, who was a member of the household; she never knew of any such sons. The mere fact that she said she heard rumors of illegitimate sons it seems to me is no proof at all. I think the Government has established enough to go to the jury.

Mr. Feldman: I don't think it has, your Honor. As a matter of fact, I think that if the Government has established enough to go to the jury on this case, then the degree of criminal proof required is far less than in the civil case.

The Court: No, because the jury has to be convinced beyond a reasonable doubt in this case.

Mr. Feldman: Is the Court——

(942) The Court: And the issue which you can argue to the jury is whether they proved it beyond a reasonable doubt.

Mr. Feldman: But is the Court now saying that the evidence presented by the Government is of such probative value on the issue that it could be submitted to the jury and that, as the Government stands at the close of its case, a reasonable man could not entertain a doubt?

The Court: A reasonable man could conclude from this testimony that there were no such sons, from

the testimony of the daughter that she never heard of them, the testimony of the daughter that they never lived in the home; where she has lived in the home all her life; the fact that the returns indicate no other address for these sons. I think a reasonable man could conclude that these sons were fictitious. But whether he concludes it beyond a reasonable doubt is another matter.

Mr. Feldman: But suppose that the reasonable man so concluded, does that mean that the Government has established that there was tax liability, that he was not entitled to the six exemptions which the Government didn't question?

(943) The Court: That is something which is not the burden of the Government at the present time. He has claimed six exemptions. If the Government established that two of those are false and thereby he evaded certain income tax, then I think they have enough to go to the jury on.

Of course the defendant can always offer proof if he wants to that he had a son and the name may have been a little different, or something like that; there may have been a mistake, but I think there is enough of this evidence to go to the jury on that.

What is your next point?

Mr. Feldman: Exception, your Honor.

* * * * * *

Mr. Feldman: Now, gentlemen, do we have any other motions that I have omitted in the course of these many.

The Court: You move for a verdict of acquit- (964) tal on the ground that the evidence is insufficient to sustain the charges.

Discussion

Mr. Feldman: Of course, your Honor.

The Court: I deny your motion and you have an exception.

Mr. Bolan: Your Honor, you have already stricken the testimony by certain witnesses regarding the Tenants Protective Association. I move to have stay in or allow to remain in the record for the sole purpose of the credibility of the witnesses those statements which contradict the testimony of other witnesses, particularly with respect to Congressman Powell who testified——

The Court: I am not striking the testimony of a witness as a whole in the case because the witnesses, nearly all of them, testified on more than the $3,000.

Mr. Bolan: Yes.

The Court: Therefore, all I am saying is that I will take from the jury any consideration as to whether that $3,000 was income to Lennon. I will direct that they disregard any testimony relating to that. I will explain to them why I am doing that.

Mr. Bolan: My point is this: May I comment (965) on the contradictory statement as to the——

The Court: On what other issue?

Mr. Bolan: For example, if there is an issue as to the testimony given by Congressman Powell.

The Court: To what other issue would it relate?

Mr. Bolan: No. He has testified to the tax service and partners and things of that sort.

The Court: All that he testified about the tax service was that there was no rent charged, which I thought was probably helpful to the Government. I don't see what else he testified to that has anything to do with the tax service.

Mr. Bolan: I would have to read from the——

Discussion

The Court: I don't think we want to get into any issue of credibility of Congressman Powell on some other issue, unless it directly relates to those other issues.

Mr. Bolan: Well, the question of the partnership, whether he considered Mr. Lennon a partner of Mr. Ford. At first he said he was just one of many and then he later said——

Mr. Feldman: Your Honor——

The Court: Even so, let me ask you this: (966) What difference does it make whether they were partners? Mr. Ford has testified that he paid certain money to him.

Mr. Bolan: Your Honor, apparently an attempt is being made that he was just one of many and got a few dollars.

The Court: Suppose he was? Suppose he was one of many? Suppose he was a partner? If he got 1600, he got it as compensation, according to Ford.

Mr. Bolan: Yes, according to Ford. But to bolster Ford's testimony, it would go against Ford's testimony if Mr. Lennon were one of many, we assume if he were one of many that the rest of these many would have been paid equivalent amounts.

The Court: I don't see that it has anything to do with it.

Mr. Feldman: I advise the Court, in fairness, that if any such statement is made in summation or argument to the jury I will be on my feet demanding a statement from the Government as to whether or not he is attempting to impeach his own witness.

The Court: But I think we have to eliminate completely this Tenants Protective Association from this picture. I don't believe the Government has

es- (967) tablished any case on that $3,000 check here in so far as this defendant Lennon is concerned. I think you have to be very careful in any argument that you make to keep that in mind.

Now, I am going to explain to the jury why I am taking that out of consideration in the case.

Mr. Bolan: Yes. Well, I make the point merely on the issue of credibility. I don't know if there is——

The Court: It depends on what credibility——

Mr. Bolan: If a man has lied about some other things, say about the Tenants Protective Association, may I not comment on that? Not for the purpose of establishing any income, but merely to show this witness has been contradicted under oath by another witness.

The Court: But on what issue does that relate to, though?

Mr. Bolan: I say any question that Congressman Powell has testified to, apart from the Tenants Protective Association.

The Court: I don't see that he has testified on anything that has anything much to do with any of the other cases on which you want to contradict him. But (968) that is up to you.

Mr. Bolan: It depends on what Mr. Feldman will say in his closing statement, if he relies on Congressman Powell.

The Court: I realize that.

* * * * *

(980) Mr. Feldman: The defense calls as it next witness Mr. Iden.

Homer H. Iden—for Defendant—Direct

HOMER H. IDEN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Mr. Feldman: Mr. Bolan, may I have Exhibit 9, please?

(Mr. Bolan hands exhibit to Mr. Feldman.)

Direct Examination by Mr. Feldman:

Q. Mr. Iden, by whom are you employed? A. Chase Manhattan Bank.

Q. At what branch, sir? A. City of New York Worth Street Branch.

Q. Is that the Importers & Traders Bank? A. Formerly named that, yes, sir.

Q. Now, Mr. Iden, did the bank at my request pursuant to subpoena search its records to determine whether or not one Joseph E. Ford had an account with that bank? A. Yes, sir.

Q. And so far as——

Mr. Feldman: I will withdraw that.

Q. Mr. Iden, what position do you occupy with the bank? (981) A. I am assistant treasurer.

Q. And are you at the Importers & Traders Branch? A. Worth Street branch, yes, sir.

Q. Is it now knowa as the Worth Street branch? A. Now known as the Worth Street branch.

Q. Is that the proper desgination? A. Yes, sir.

Q. And so far as you have been able to determine, Mr. Iden, did Mr. Joseph E. Ford have an account with the Chase National Bank during the years 1949, '50 and '51?

A. We have no way of ascertaining. Our records do not show at this time.

Q. Now, tell me this, if you will, Mr. Iden, you mentioned something to me when I discussed this with you and I asked the bank to go through its reco. s, you mentioned something to me about the bank records being destroyed after a period of six years; is that right, sir? A. That is right, sir.

Q. But are the central index files similarly destroyed? A. Yes, sir.

(982) Q. Now, in 1950 do your records show any account for Joseph E. Ford? A. No, sir.

Q. And in 1951 do your records show any account for Joseph E. Ford? A. No, sir.

Q. If Mr. Ford, Joseph E. Ford, was a depositor in your bank at your branch in 1951 would your records so indicate? A. It is quite possible, according to what month the account may have been closed.

Q. Well, assuming that the account was in effect in March of 1951 would your records indicate that? A. I would say yes, sir.

Q. Now, Mr. Iden, I show you a check, Government's Exhibit 9 in evidence, and ask you whether or not you recognize it as a check of your bank? A. Yes, sir.

Q. Now, I draw your attention to the fact that the check is made payable to Acy Lennon. A. Yes, sir.

Q. And I also draw your attention to the fact that on the back of the check the check is endorsed first by Acy Lennon and then by Joseph E. Ford? (983) A. Yes, sir.

Q. Now, Mr. Iden, you were with the bank in 1951? A. Yes, sir.

Q. And in 1949? A. Yes, sir.

Q. How long have you been with the bank? A. Since 1929.

Q. And are you familiar with the bank's operations and policies? A. Fairly so, yes, sir.

Q. Now, Mr. Iden, looking at that check and the endorsements which appear thereon, to whom would the bank as a matter of policy have paid that check if it were cashed? A. As a matter of policy we would have paid it to the last endorser.

Q. And who is that, sir? A. Joseph E. Ford.

Q. Now, that check indicates, does it not, that in 1949 Joseph E. Ford had an account with the bank? A. Yes, sir.

Q. Now, are you familiar, Mr. Iden, with the bank's policy with regard to the redemption of (984) currency which is in any way affected by the elements, such as by being burned, or by being soaked, or being charred, and the like? A. Yes, sir.

Q. And are you familiar with the policy employed by the bank or used by the bank in 1951 with regard to such currency? A. Yes, sir.

Q. Now, assuming, Mr. Iden, that in 1951 a depositor of the bank brought in several thousand dollars of charred currency in which the serial——

Mr. Bolan: I object, your Honor. There is no evidence of several thousand dollars.

The Court: Well, suppose he brought in some currency, would that be all right with you?

Mr. Feldman: Well, so that the Court's recollection may be refreshed.

The Court: Well, I mean, let us leave out——

Mr. Feldman: There was at least $1600 according to Mr. Ford, and the testimony——

The Court: That is not several thousand.

Q. Assuming, Mr. Iden, that a depositor of the bank brought in at least $1600 in currency which (985) had been charred, but on which the serial numbers were still visible would the bank have exchanged that currency for the depositor merely by his producing that money and getting fresh new money for it? A. No, sir.

Q. What would the bank have done? A. Accepted the money on a collection basis.

Q. And then? A. Forward it to the Treasury of the United States for redemption if possible.

Q. And would the bank have waited until it received the money back from the Treasury Department before turning it over to the depositor? A. Right.

Q. Now, Mr. Iden, is a record made of any such currency transactions? A. Yes, sir.

Q. And, so far as you know, are there official forms to be filled out and on file with the Treasury Department concerning such transactions? A. Yes, sir.

Q. Now, have you searched the bank's records for any such records? (986) A. We have searched the bank's records for that, yes.

Q. And have you found any such records? A. We have not found any records.

Q. Now, Mr. Iden, you used the expression "We would have sent it to the Treasury Department on a collection basis." Most of us in this courtroom are not bankers and will you be good enough to explain what is a collection basis? A. Well, an item being left with the bank to be handled where they would have to send it out to a paying agent of some sort for payment, before we could pay the customer or individual that came in the bank, why, it cannot be treated as a cash basis where we exchange cash for cash.

Homer H. Iden—for Defendant—Cross

Q. In other words, you accept it as sort of trustee and hold it and handle it for the depositor, and give him back whatever he is supposed to get? A. On that basis.

Q. Have you had any experience in the redemption of currency with the Treasury Department? A. Yes, sir.

Q. And on the basis of your experience, Mr. Iden, about how long does it take between the time (987) that you send money down to the Treasury before you get it back? A. I could not answer that.

Q. Well, would it be more than a day or two? A. Oh, yes; yes, sir.

Q. Would it be more than a week? A. Yes.

Q. More than two weeks? A. Quite likely so.

Mr. Feldman: I have no further questions.

Cross-Examination by Mr. Bolan:

Q. Mr. Iden,—. A. Iden.

Q. —with respect to the check which you are now holding, would it be the policy of the bank if Mr. Lennon, to whom that check is made payable, came to the bank with the check and had no identification, would it be the policy of the bank to require some identification? A. Yes, sir.

Q. And if Mr. Ford accompanied Mr. Lennon to the bank and was known to the bank, would the bank have paid the money over to the payee if Mr. Ford in the presence of the payee endorsed that check at his (988) request? A. No, sir.

Q. They would pay it over to Mr. Ford? A. Pay it to Mr. Ford.

Q. And if Mr. Ford satisfactorily identified the payee

and was known to the teller as Mr. Ford, and the bank knew that Mr. Ford was the man who had the account, and Mr. Ford signed his name, the teller would refuse to turn over the money to Mr. Lennon? A. Yes, sir.

Q. And why would that be, sir? A. He is not the last endorser.

Q. Would the bank turn over the money to Mr. Ford in Mr. Lennon's presence? A. If Mr. Lennon were there, yes.

Q. Now, with respect to the record as to the collection, how far back do those records go? A. A retention period of six years.

Q. So there would be records available for 1951? A. Quite possible.

Q. Well, are you sure? A. We have no record of Joseph E. Ford account in the bank at the present time, or at that time.

Q. And you are not sure whether your records go (989) back that far? A. Our retention period is six years and we have no way of telling after that.

Q. Well, this is 1956, is that right, sir? A. That is right, sir.

Q. So you do have records available for that period of time? A. For six years, yes, sir.

Q. And you have no account for Mr. Ford for the year 1951? A. Not according to our records.

Q. Well, if he had an account it would show it, is that right? A. That is right.

Q. At your branch? A. That is right.

Q. Have you checked any other branches? A. No, sir.

Q. Just checked this particular branch? A. Yes, sir.

Q. Had Mr. Ford had an account there in 1949? He had, is that right? A. Yes, according to this, yes, sir.

Clyde Noel—for Defendant—Re-direct

Mr. Bolan: No further questions.

(990) Mr. Feldman: No further questions, your Honor.

* * * * * *

CLYDE NOEL, called as a witness by the defense:

(1006) *Re-direct Examination by Mr. Feldman*:

Q. Mr. Noel, in 1952, if you know, that was the first year that Mr. Lennon operated the tax service, is that right? A. Would you mind repeating that question?

Q. I will withdraw it. Perhaps this may assist you. Do you know who Joe Ford is? A. I have heard the name Joe Ford, but I don't know him personally.

Q. I understand. Now, in 1951—in 1952, so far as you know, that was the first time that you were ever connected with Mr. Lennon in operating this tax service and working for him? A. Yes, I believe that was the first year I worked for Mr. Lennon.

Q. You never worked for Mr. Ford, did you? A. No, I did not.

Q. Do you remember the question that Mr. Bolan asked you a moment ago about whether or not there were any books of the tax service? A. Yes.

(1007) Q. Now, in operating a tax service, so far as you know as an accountant, would books have been required as such? A. Well, all businesses are required to have books.

Q. You are talking as an accountant now, aren't you? A. I am talking as an accountant now.

The Court: That is a matter of law, too, isn't it? You are supposed to keep a record of your income.

The Witness: Your income and expenses.

Q. When you were referring to books, you were referring to books of account, is that right? A. Yes, accounting books; books of income and expense.

Q. You did not intend by your answer to convey the impression, did you, that Mr. Lennon had no records? A. No, I didn't mean to convey that.

Q. And although you have no recollection of what records you had before you when you prepared the return, would you as an accountant have put anything down on that return as far as the figures are concerned without having some record before you? (1068) A. Go a little slower and repeat that.

Q. Surely.

Mr. Feldman: Mr. Reporter, will you read it?

(Question read.)

A. Well, I wouldn't have put any figures down without having some records, but whether they were presented to me or in the questionnaire by Mr. Lennon——

Q. Right. But what I am saying is that these figures didn't come out of your head? A. No, they didn't come out of my head or out of a hat, as far as I know.

Q. You prepared— A. And another—excuse me. Another thing about that return, that is the return for 1952, in preparing that return for 1952 that was prepared in 1953.

Q. Right. A. Right? The money that Mr. Lennon made the year that I worked there for him, that was the first year, would have to be declared on the 1953 tax return, and prior to that year I assumed, I heard, that he had a tax business, that he was in partnership, or him and Mr. Ford had worked together doing tax work.

So, well, I didn't know whether he had a loss or a gain or whatever it was.

(1069) Q. Or what he made out of it, is that right? A. Or what he made out of it or how he was declaring that.

Q. I understand.

Mr. Feldman: I have no further questions.

By the Court:

Q. Did you fill out this item about the dependents claimed by Mr. Lennon? A. Yes.

Q. You did? A. Your Honor, I did.

Q. You wrote in the names of the four persons there, is that right? That is your handwriting? A. I believe it is, your Honor. That is my handwriting.

Q. Where did you get that information from? A. From Mr. Lennon.

Q. How many years had you been preparing income tax returns up to that time? A. Since 1950, your Honor.

Q. Why didn't you fill out Schedule I on the return about those dependents?

Mr. Feldman: Schedule what, your Honor?

The Court: Schedule I (handing).

(1070) Mr. Feldman: Appearing where, your Honor?

A. That is close relatives. This is for children.

Q. Dependents claimed as close relatives. A. Well, close relatives were more or less cousins, aunts, uncles, and things like that. Children are——

Q. Children aren't close relatives? A. Well, they are close relatives, but they have a place here on front for

children. You don't have to go to the back for close relatives—for children; children are listed on the front of the return, your Honor.

Q. How long have you been preparing income tax returns? A. Since 1950, your Honor.

Q. You notice Schedule I says exemptions for close relatives, see instructions, then when you get the total you have to enter in item 1, page 1, the number of close relatives claimed above, and that requires you to state the relationship, what their income was, how much was contributed to them.

Haven't you ever filled that out on income tax returns that you prepared?

Mr. Feldman: Your Honor, may I object to the (1011) Court's question?

The Court: I want to find out. Here he says he filled that out and apparently he only filled out part of the return about the dependents. I want to find out why.

Mr. Feldman: My objection is this: On what basis does the Court come to the conclusion that he did not fill out something that he should have?

The Court: It is not filled out on the return.

Mr. Feldman: Why should it have been? The face of the return, 1952 return, item G, says, "List names of your children."

The Court: That is right.

Mr. Feldman: "Including stepchildren, legally adopted children, with 1952 gross income of less than $600 who received more than one-half of their support from you in 1952."

The Court: Page 1 of the return asks for a lot of things; page 2 you have to break it down in the schedules.

Mr. Feldman: No, your Honor. You mean on page 3, don't you? Or is that on page 2?

The Court: Page 2, Schedule I.

(1012) Mr. Feldman: Now, if your Honor would be good enough——

The Court: I am asking a question; let the witness answer.

Q. Why didn't you fill that out? A. Because if your Honor would turn back to page 1, item D, you will find that D says "Enter here number of exemptions claimed for close relatives listed in Schedule I, page 2."

And C says—D is different from C. C is for children. D is for close relatives.

Q. Children you consider are not close relatives? A. Well, the tax return is more or less self-explanatory. "List names of your children, including stepchildren, legally adopted children, with 1952 gross income of less than $600 who received more than one-half of their support from you in 1952. See instructions."

Mr. Feldman: Your Honor, would the Court be good enough to look at the face of the 1952 return? And you will notice there an entry——

The Court: I am just trying to find out. The witness has given his answer that he didn't consider that children were close relatives.

Mr. Feldman: The inquiry, with all due defer-
(1013) ence to the Court, the inquiry is as pertinent as saying not including somebody else's grandfather in Schedule I.

But the face of the return clearly states with regard to item C, "Enter the number of children listed."

The Court: Of course you know perfectly well that dependents may be other than children. And Schedule I relates to exemptions for close relatives. It says "Name of dependent relative. Also give address if different from yours, and relationship."

Mr. Feldman: But, your Honor, there is a difference in the——

The Court: I just want to find out why the witness didn't fill out that schedule. He has given an answer, he has given an answer. All right.

By Mr. Feldman:

Q. Mr. Noel, would you be good enough to look at the 1952 return? I ask you to go to page 2, I think it is, yes, of the return, and go to Schedule E. A. Schedule E?

Q. Yes. You will notice that that is a schedule which relates to income from annuities or pensions. Can you explain how that happens to be empty? (1014) A. How that happens to be empty?

Q. Yes. A. Because I didn't have any information to put in there.

Q. Schedule F, income from rents and royalties. A. The same reason.

Q. So that so far as you were concerned in the preparing of this return, you prepared it on the basis of the information you had and put that information in the place where it belonged? A. Where it belonged.

Requests to Charge

(1063) The defense rests, your Honor.

The Court: And you renew your motions?

Mr. Feldman: I do, sir.

The Court: Has the Government any rebuttal witnesses?

Mr. Bolan: No, your Honor.

The Court: Both sides rest?

Mr. Bolan: Yes.

Mr. Feldman: Yes.

The Court: And you renew your motions?

Mr. Feldman: I do, your Honor, all of them.

The Court: All of your motions, and the same rulings as before, and exception is noted.

You are ready, then, to sum up, Mr. Feldman?

(1139a)

REQUESTS TO CHARGE

I

The Court's attention is respectively referred to the fact that there are six (6) separate counts in the indictment.

With the exception of counts 5 and 6, each of the counts contains several items of alleged tax evasion.

Unless the significance of each year and each item is carefully explained to the jury, a misconception may arise which may cause some or all of the jurors to conclude that guilt on one item in one year may require a guilty verdict on the entire indictment.

Although many courts have striven to avoid such a consequence, their efforts have not been too successful. The Court is referred to the many decisions of the Courts of Appeals which have attempted to winnow from a general (1139b) verdict of guilty that portion of the verdict supported by the evidence and that portion which was not.

To avoid such a consequence the Court is respectfully requested to instruct the jury to advise the Court as to its finding on each of the items in each of the counts as well as to its general verdict on each count. In this manner the Court will be able to determine whether the general verdict reached was so reached within the limits of the Court's charge.

Usually the foregoing request is not required because an indictment in each of its counts specifies a particular act of evasion. To illustrate, normally Count 1 of the indictment would have been divided into 2 counts—one covering the dependency situation and one covering the Ford payment. Since the Grand Jury saw fit to issue an omnibus count it will become virtually impossible for this Court or for the Court of Appeals to test a possible guilty verdict against the evidence presented on each item in each count.

Under no circumstances must the use of an omnibus count be permitted to preclude the defendant from a fair trial by rendering difficult, if not impossible, the testing of the jury's verdict.

Requests to Charge

(1139c)

II

With regard to the dependencies issue:

The Court will recall that the indictment is framed in the negative. It is the government's claim that the defendant was guilty of tax evasion because he took "Acy, Jr." and "William" as dependent sons when they were not dependent sons.

The government's bill of particulars limits the government's case just to that issue. There is no claim by the government that the defendant was not entitled to six (6) exemptions.

Assuming that the only issue in the case related to dependents, the government's burden of proof is not met until the government proves that the defendant was not entitled to six (6) exemptions—no matter what the identity of such exemptions—because the defendant would have no additional tax due unless he was entitled to a lesser number of exemptions than he took. As a result of false identification of dependents, the defendant might be guilty of some other crime (making a false statement) but he cannot be guilty of a 145(b) crime.

An essential element, therefore, of the dependency issue is the number of exemptions taken by the defendant as compared to the number he was entitled to take.

(1139d)

A

"In order for the defendant to be guilty of tax evasion on his tax returns for the years 1949, 1950, 1951 and 1952, the jury must first determine the total number of

exemptions which the defendant was entitled to take for those years. The defendant's tax returns show that he took 6 exemptions for each of the years in question, namely, 1949, 1950, 1951 and 1952.

The law defines an exemption for those years as being a dependent person to whose support the defendant contributed at least 51% or more than half, and whose gross income was less than $600 during the year and bearing a certain relationship to the defendant. Thus, an exemption could be a son, and that includes an illegitimate son, a nephew, an uncle, a grandfather, a step-son, an adopted son, etc.

Before you can determine that the government has sustained its burden of proof on the dependency issue, you must determine whether the government has, beyond a reasonable doubt, established the number of exemptions to which the defendant was entitled."

B

"The government has the burden of proving beyond a reasonable doubt the maximum number of dependents to which the defendant was entitled."

(1139e)

C

"If you find that, regardless of what appears on the defendant's tax returns, the government has not established the total number of exemptions to which the defendant is entitled, then you need not carry your deliberations any further but must bring in a verdict of not guilty on the issue of dependencies in the indictment.

Requests to Charge

D

"The mere fact that the defendant may have taken as exemptions persons he was not entitled to take is insufficient to base a finding of guilty under this indictment. That fact standing alone does not establish that there was any additional tax due."

E

"If you find that the only evidence before you is the fact that the defendant falsely identified his dependents, then the government has not sustained its burden of proof and you must bring in a verdict of not guilty on the issue of dependencies in the indictment."

F

"The government does not contest the number of exemptions to which the defendant is entitled. For the purposes of this trial the government concedes that the defendant is entitled to six exemptions."

(1139f)

III

With regard To the Issue of the Ford Payments:

This is a credibility issue. Care must be exercised by the Court to avoid combining the Ford payments with the other issues in the case. Ford's testimony stands alone. It is uncorroborated. The elements involved in the Ford testimony are as follows:

a) Is it inherently incredible in the light of Ford's testimony concerning his own financial difficulties; his affidavits of improvidence, his alimony difficulties.

b) Ford's split with Powell and Powell's lieutenants —including the defendant.

c) The absence of records to substantiate Ford's story that the checks were payments to Lennon and not financial manipulations by Ford with a then trusted lieutenant to hide Ford's own cash. This must be borne in mind along with the fact that Ford, an accountant, could produce nothing to support his story.

d) Ford's burned currency story as compared with the testimony by the bank as to the bank's method of handling burned currency.

e) If Ford trusted the defendant, as he testified (1139g) he did, then why did Ford have to go to the banks with Lennon for the purpose of cashing the checks when a simple "OK to cash" would have been sufficient?"

* * * * *

CHARGE OF THE COURT

(1140) (DAWSON, J.)

The Court: Mr. Foreman, ladies and gentlemen of the jury:

We have now reached the point in this trial where you are about to enter upon your final function as jurors, which is one of the sacred duties of citizenship.

You have given careful attention to the evidence in this case during the trial, and I am certain that you will approach and conduct your final deliberations in that same fine spirit which you have so far displayed, and with fairness and impartiality reach a just verdict.

Charge of the Court

In our court system, the functions of the judge and the functions of the jury are clearly defined. As you are not lawyers, it is my duty to instruct you as to what the law is. It is your duty (1141) to accept the law as I state it to you and then to determine, from the facts, from the evidence which you have heard, whether the defendant has violated the law.

Just as I am the exclusive judge of the law, so you, the members of the Jury, are the exclusive judges of the facts. As the sole and exclusive judges of the facts, you, and you alone, determine the weight, the effect, the value of the evidence, and the credibility of the witnesses.

In this case you are called upon to act as judges of the facts in a criminal prosecution where the Government is one party and the defendant the other. Let me add, the fact that the Government is a party entitles it to no greater and no less consideration than any other party to a litigation. The rich, the poor, the powerful, the weak; persons of every race, color, creed and religion, all stand as equals before the bar of justice.

The issue in this case is one of fact. In determining that issue, you decide it on the evidence. No consideration of politics, no consideration of race, no consideration of religion has any part in your deliberations, and we would be false to our duties as American citizens if we allowed any (1142) such consideration to enter into the determination, one way or another, of the issues of fact in this case.

The case must be decided within the scope of the charges made against the defendant as contained in the indictment. I shall hereafter discuss in detail the indictment and the the essential elements of proof necessary to sustain a conviction under the six counts of the indictment which I will submit to you.

Charge of the Court

As I had previously indicated to you when you were impaneled as jurors, the indictment itself is not evidence. It merely describes the charges made against the defendant. It is not evidence. Let us, before going into the charges in the indictment, first consider the principles generally applicable in every criminal case.

The defendant has denied the charges in the indictment. Accordingly, the Government, having made the charges, has the burden of proving them, and proving them beyond a reasonable doubt. The burden of proof never shifts and remains with the Government during the entire trial and during your deliberations as jurors.

The defendant does not have to prove his innocence. He is presumed to be innocent, and this (1143) presumption is overcome only when you reach a conclusion from the evidence that his guilt has been established beyond a reasonable doubt.

You may ask yourself what is meant by a reasonable doubt. There is nothing mysterious about the term. It means, as the words themselves indicate, a doubt based upon reason. It does not mean a capricious or a silly doubt. It does not mean a doubt which might arise because a juror does not wish to perform an unpleasant duty. The phrase "reasonable doubt" means exactly what it says—a doubt based upon reason.

It is not necessary for the Government to prove the guilt of the defendant beyond any possible doubt. If that were the rule, few cases might reach a conclusion. The fact is that in this world of ours it is practically impossible to prove any controverted fact which, by its nature, is not susceptible of mathematical certainty beyond all possible doubt. In consequence, the law is that in a criminal case it is enough if it be proved that the defendant's guilt is established beyond a reasonable doubt.

Proof in a case such as this is not a matter of mathematical or absolute certainty. In (11-44) the nature of things, it cannot be. But to sustain a conviction, there must be such proof as satisfies your reason as intelligent persons, beyond any reasonable doubt, that the defendant is guilty of the charges contained in the indictment.

If you find no reasonable doubt of the defendant's guilt, then you must return a verdict of guilty. If you find a reasonable doubt as to the defendant's guilt, then you must return a verdict of not guilty.

The defendant has not taken the stand. Under our system of law, no defendant is required to take the stand in his own defense. He may sit at the counsel table and say nothing and offer no evidence at all in his own defense, and the burden still remains on the Government. The fact that a defendant does not take the stand to testify is not to be considered by you in your deliberations in determining the guilt or innocence of the defendant. In other words, the defendant is not called upon to prove his innocence under our system of law. The burden is always upon the Government to prove the defendant guilty, and to prove it beyond a reasonable doubt.

(1145) There is another thing you should keep in mind; and that is that you are determining the guilt or innocence of the defendant on a serious charge, and you must determine that from the evidence that you heard from the stand and the exhibits.

The case has been tried by two competent lawyers, but a trial is not a popularity contest between lawyers. It is not a question of whether you like one lawyer better than the other. It is a determination of the guilt or innocence of the defendant on the charges contained in the indictment.

Charge of the Court

There were two indictments in this case which have been consolidated for trial. As I have said, the indictment is not evidence. It merely states the charge made against the defendant, and the Government has the burden of proving the respective charges beyond a reasonable doubt.

You will have to return a verdict on each of the six counts of the indictment. These six counts of the indictment relate to the income taxes for six separate years, 1949 through 1954, inclusive. You will have a copy of the indictment in the jury room with you when you are considering your verdict.

Each count of the indictment alleges that (1146) the defendant did unlawfully, wilfully, and knowingly attempt to defeat and evade a large part of the income tax due and owing by him for a particular calendar year. Therefore, in each count of the indictment, the question is whether he "unlawfully, wilfully and knowingly attempt to defeat and evade" part of the income tax due by him to the United States for that particular year.

To a very large extent, our Government relies upon the taxpayer's own disclosure for the collection of income taxes and, indeed, for the payment of refunds, if the taxpayer claims a refund is due. Under our tax laws, we operate on an honor system and each taxpayer is initially his own tax assessor. Such a system can function successfully only if the taxpayers render true and honest accounts to the Government in connection with their income tax returns.

To insure effective operation of the taxing system, Congress has provided penalties for a wilful attempt to defeat and evade income taxes. A wilful attempt to evade income tax for one year is a separate offense from an attempt to evade a tax for another year. That is the

reason why there are six separate (1147) counts in this indictment and why you are to bring back a separate verdict on each count.

The first count of the indictment relates to the calendar year 1949. It alleges that the defendant attempted to evade part of the income tax owing for that calendar year by filing, on or about March 15th of the following year, a false and fraudulent income tax return wherein he stated that his net income for the calendar year 1949 was the sum of $3,091.25; in which he stated that he was entitled to exemptions for "Acy, Jr." and "William" as dependent sons; and that there was no tax due and owing on said returns, whereas, as the indictment says, as he then well knew, his net income was the sum of $4,691.25; that he was not entitled to claim the said "Acy, Jr." and "William" as exemptions in that they were not dependent sons; and that the amount of income tax due to the United States was $388.39.

Now, this first count of the indictment, therefore, alleges that the defendant unlawfully, wilfully, and knowingly attempted to evade part of his income taxes due for the year 1949 by doing two things:

(1) Listing two dependent sons who were (1148) not dependent sons; and

(2) Failing to include $1600 of income on his returns.

The Government, as you know, offered the testimony of Mr. Ford, who stated that he hired the defendant Lennon to assist him in the running of a tax service, and that he paid the defendant Lennon, in the year 1949, $1600 for such services rendered by him in connection with the tax service run by Mr. Ford in that year.

Charge of the Court

A check drawn by Mr. Ford and endorsed by the defendant Lennon and also by Mr. Ford was received in evidence. The income tax for that year is also in evidence. It shows that the defendant did not include in his income for that year any $1600 for work done for Mr. Ford in connection with the tax service. It also shows that the defendant claimed four exemptions, in addition to himself and his wife; to wit: two daughters, a son, Acy, Jr., and a son, William.

The return shows no tax due but indicates that a refund was due the taxpayer, and Exhibit 22 received in evidence shows that a refund was paid to the defendant on May 24, 1950, in the amount of (1149) $137.80.

Testimony given by Mr. Smith, of the Bureau of Internal Revenue, was that if the defendant was not entitled to claim Acy, Jr. and William as dependents and if he had received $1600 from Mr. Ford for services rendered to Mr. Ford, he would have been entitled to no refund, and, in fact, would have been indebted to the Government in the sum of $380.36 for income taxes with respect to that year.

We now turn to the second count of the indictment which relates to the income tax return for the year 1950, and which was filed, of course, in the following year.

The indictment alleges that the defendant in that year did unlawfully, wilfully, and knowingly attempt to defeat and evade a large part of the income tax owing by him by stating that his net income in that year was the sum of $3,586.20; that he was entitled to 4 exemptions for Acy, Jr. and William as dependent sons; and that there was no tax due and owing by him; whereas, the indictment alleges, he had a net income for that year of $5,286.20; that he was not entitled to claim Acy, Jr. and William as exemptions in that they were not dependent sons; (1150) and that the amount of income tax due to the United States for that year was $525.41.

We, therefore, have with respect to that return issues with reference to two items: the first item, of course, was the defendant's claiming of Acy, Jr. and William as dependent sons; the second is whether he reported his full income.

The Government offered on that the testimony of Mr. Ford that in that year he also paid the defendant $1600 for work rendered in connection with the tax service which was paid by a check, and that he also paid the defendant $100 in that year additional in cash.

The tax return which is in evidence does not indicate that any such amounts were included in the net income of the taxpayer, and it indicates that he did claim as dependents sons Acy, Jr. and William, in addition to his two daughters, his wife, and himself.

The tax return stated that no tax was due and that a refund was in fact due. Exhibit 22 received in evidence shows that a refund was paid to the defendant in the year 1951 in the sum of $224.60.

(1151) The testimony of Mr. Smith of the Bureau of Internal Revenue was that if the defendant was not entitled to claim Acy, Jr. and William as dependents, and if he had received income from Mr. Ford of $1700 in addition to that reported in his return, there would have been no refund owing to the defendant for that year, but that there would have been an additional tax for that year to be paid by the defendant of $502.20.

The third count of the indictment relates to the 1951 tax return which, of course, was filed in the following year. It alleges that the defendant unlawfully, wilfully and knowingly attempted to evade a large part of his income tax for the calendar year 1951 by filing a false return in which he stated that his net income for the year 1951 was $3,159.40; that he was entitled to exemptions for Acy, Jr. and William as dependent sons; and

that there was no tax due and owing by him; whereas, so the indictment alleges, his net income was the sum of $4,759.40; that he was not entitled to claim Acy, Jr. and William as exemptions in that they were not dependent sons; and that the amount of income tax due to the United States was $488.50.

(1152) Here, again, the Government contends that the defendant received from Mr. Ford $1600 in 1951 for work in connection with the tax service and that he did not report this income. The tax return is in evidence and shows no such income reported. It shows that the tax return claimed no tax due and that a refund was due to the defendant.

The evidence shows in Exhibit 22 that the defendant in 1952 received a refund in the sum of $321.87.

Mr. Smith of the Bureau of Internal Revenue testified that if the defendant was not entitled to claim Acy, Jr. and William as dependents in that year, and if in addition to the income reported in his income tax return he received an additional income of $1600 from Mr. Ford for services rendered by him to Mr. Ford, there would have been no refund due to the defendant, but there would have been a tax due to the Government of $481.32.

The fourth count of the indictment relates to the income tax return for the year 1952 and alleges that in the following year the defendant filed a return and unlawfully, wilfully, and knowingly attempted to evade a large part of the income tax owing by him (1153). by stating that the joint income of himself and his wife for that year was $2,657.63, and that they were entitled to exemptions for Acy, Jr. and William as dependent children, and that there was no tax due on the return.

The indictment charges that the defendant was not entitled to claim Acy, Jr. and William as dependent

children and that, in fact, the income of the defendant in that year was not the sum set forth in the return but was the sum of $4,157.63. This additional income, the Government charged, was $1500 which the Government claimed was received by the defendant as his share in connection with the sale of certain apartments in a co-operative housing project in Queens.

As I have already advised the jury, I have stricken out all testimony with reference to this item. The testimony was clear that the $3,000 which was paid in connection with the sale of these apartments was paid by a Mr. Kent with the understanding that it was to go to a corporation known as the Tenants Protective Association; that it did go into the bank account of the Tenants Protective Association and thereafter, in some way, was paid out. How (1154) it was paid out and why it was paid may, in view of the uncertain testimony, be somewhat of a mystery, but there was no testimony that it was paid out to the defendant Lennon, or was paid out for his benefit or on his order alone.

Whether the Tenants Protective Association properly handled these funds and whether it should have filed a tax return with reference to the funds is not before this Court or jury. We are not here concerned with the activities of the Tenants Protective Association on any evidence which has been presented in this trial. There was no evidence that the funds were paid to the defendant and, therefore, I have eliminated from consideration by the jury any question of a failure to include in the 1952 return the sum of $1500 which is alleged with reference for that year.

With reference to the 1952 return, the only question is whether the defendant wilfully and knowingly attempted to evade income taxes by claiming as dependent sons Acy, Jr. and William.

Now, let us recapitulate the issues with reference to the first four counts of the indictment—those which relate to the tax returns for 1949, 1950; (1155) 1951 and 1952. Those were the years in which the defendant's returns claimed as dependents sons Acy, Jr. and William, in addition to his two daughters, himself and his wife.

You have heard the evidence with reference to the defendant's family. You have heard the testimony of his daughter that she had never known any brothers and that no brothers had lived with them. You have heard the testimony of Mr. Ford that he never heard of any sons of the defendant. The daughter testified that she had heard rumors that her father might have had illegitimate children, but no testimony of any illegitimate children was given.

As we all know, the income tax law allows, and it allowed in the years in question, an exemption of $600 for any dependent child who received half of his or her income or support from the parent. In other words, for each such dependent child, $600 of the taxpayer's income was tax free and not taxable.

If a taxpayer claims an exemption for a dependent when, in fact, he does not have a dependent and claims that knowingly, wilfully, and intentionally with the intent to evade the payment of income taxes, he is escaping part of the tax liability which he (1166) otherwise would have to pay. You will have that issue with reference to the 1949, 1950, 1951 and 1952 returns.

No exemption was claimed for Acy, Jr. or William in the tax returns which were filed for the years 1953 and 1954, which are the fifth and sixth counts of the indictment.

In addition, in the tax returns for the years, 1949, 1950 and 1951, the Government contends that the taxpayer re-

ceived income in each year from Mr. Ford for services performed in connection with the tax service run by Mr. Ford, and that he failed to include that income on his income tax return and thereby avoided payment of tax on those amounts.

Here you will have the question as to whether the taxpayer did receive those funds from Mr. Ford, whether he received them for services rendered to Mr. Ford, and whether he failed to report them wilfully and knowingly with an attempt to evade payment of income taxes owing by him.

On the issue as to whether the defendant omitted to report income alleged to have been received by him from Mr. Ford for services in assisting Mr. Ford in the tax service in the years 1949 to (1157) 1951, you will have a question of weighing the evidence primarily of Mr. Ford and the exhibits which have been introduced in evidence to determine whether in fact you believe that it has been established, beyond a reasonable doubt, that the defendant did receive those payments from Mr. Ford in those years for services, and that he failed to report the income in his income tax return with the wilful intent of evading an income tax owing on it.

There seems to be no dispute that Mr. Lennon, in the years 1949, 1950, and 1951, was working on the tax service with Mr. Ford, that he rendered services in connection with it, and that he did not on his tax returns any income from such services. Mr. Ford has testified that he did pay him, and certain checks have been received in evidence.

As far as the tax returns of the defendant would indicate, he received no compensation from Mr. Ford in those years.

You may take all of this evidence in account, together with all other evidence in the case, in determining whether

to accept Mr. Ford's testimony and whether the defendant failed to report income on his income tax return with a wilful intent of evading an (1158) income tax.

With reference to the question of dependents, you have the issue in those years as to whether the defendant in fact reported dependents and took exemptions by reason of them when he knew that he had no such dependents and was not enlitled to those exemptions, and that he did that with the wilful intent of evading payment of income taxes.

We now come to Counts 5 and 6 of the indictment.

The fifth count of the indictment relates to the tax for the calendar year 1953. The tax return was filed in 1954. No claim was made in that year for Acy, Jr. or William as dependent children. The indictment does allege that in that year the tax return filed on behalf of the defendant and his wife stated that their net income was $3,772.32 and that the amount of tax due and owing thereon was $304.66 whereas, alleges the indictment, he well knew that their joint net income for the year was the sum of $7,357.82 upon which there was owing income taxes of $1,123.62.

The additional income which the Government says should have been included in the return in that (1159) year comprised the following items:

(1) Commissions received from the Variety Furniture Company on sales of furniture, $630. The Government introduced evidence that in that year the defendant received from this furniture company commissions on sales of furniture of $630. The defendant contends that this amount was included by him in his income tax return for the following year and that he failed to include it in the 1953 return because of his belief that it was properly

reportable in the 1954 return. If he honestly made a mistake for the year in which the income was to be reported, he could not be guilty of a wilful violation of the law with reference to that item.

(2) Fees received by the defendant from purchasers of the apartments of the cooperative housing project: $390.

Testimony has been given by various persons who bought apartments at this project that they gave various sums of money to the defendant who was one of the managing agents of the project at that time, which sums aggregated $390. The circumstances surrounding the payment of these sums has been told you by the witnesses.

(1160) If you conclude that such payments were in fact received, then you must further consider the question as to whether they constituted gifts to the defendant or whether they were earned income of the defendant. This is because of the fact that if they were gifts, there was no obligation that the defendant report them on his income tax return.

On the other hand, if you find that these payments constituted earned income of the defendant, then the defendant had an obligation to report them on his income tax return.

Whether these sums alleged to have been paid to the defendant were gifts, or whether they were paid to him for services, is a question of fact which will have to be determined by the jury, taking into account all of the testimony in the case.

The mere fact that the payments were voluntary does not necessarily establish that they were gifts. The question is whether they were made for services rendered or to be rendered by the defendant. If the payments were

made to the defendant for this purpose and received by him for this purpose, then such payments would constitute earned income to him, no matter whether they were described colloquially as (1161) gifts or gratuities, but if they were given to him not because of services rendered by him, or services to be rendered by him, then they would not be taxable income to the defendant.

In determining whether these items were earned income or gifts, you should take into account the relationship of the parties, the conversations of the parties, as testified to by the witnesses, and all of the circumstances surrounding the transactions, and determine as a fact whether these items were gifts or whether they were compensation for services rendered or to be rendered by the defendant. If they were the latter, they should be included as earned income. If they were truly gifts, there was no necessity for the defendant to report them on his income tax return.

Of course, if the payments were made as part of the payment for the stock of the corporation, they would not be income of the defendant.

The third items in this series has to do with fees for services rendered in preparing income tax returns.

The Government contends that in the year 1953, the defendant received $2,375 from various per- (1162) sons for the preparation of their income tax returns.

You will recall that certain of the witnesses testified as to amounts paid to the defendant for the preparation of income tax returns. After certain witnesses were called, the defendant stipulated that if all of the witnesses subpoenaed by the Government were called, they would testify that they had paid certain sums for the preparation of their income tax returns to the defendant, and that their testimony would be that they had paid

to the defendant $2,375 in the calendar year 1953 and $2,366.50 in the calendar year 1954.

The income tax returns have been received in evidence. They showed that for the year 1953 no income is specifically stated as coming to the defendant from the tax service. There is an item of $750 designated as commissions.

The defendant contends that he had certain expenses in connection with operating the tax service and that the sum of $750 was the net income which he received from that tax service.

The Government has established what the gross income of the defendant was from that service. There has been no evidence as to what the net income (1163) of the defendant was from this service after the payment of expenses.

The law provides that all kinds of income, with certain exceptions not here relevant, are subject to income tax. That means that the income must be included in your return even though it may be offset by expenses and other deductions. However, when a taxpayer has a business or profession, he is taxed on its profits, not on its total receipts. Therefore, in each year a separate schedule—I believe it was customarily Schedule C—was provided to enable the taxpayer to subtract his costs of doing business from his receipts. The costs which would be deducted are the ordinary and necessary costs of doing business, such as salaries, rent, supplies, and other expenses.

The fifth count of the indictment relates to the return for the calendar year 1953.

This shows that the defendant did include a Schedule C listing his total receipts from the luncheonette and the expenses in connection with it, and showing his profit

or loss from the operation of that business. It shows that he did not include any schedule showing the total receipts from the tax business or the expenses of operating the tax business.

(1164) The Government contends that it has established that he received from the tax service $2,375 in that year; and that to report $750 as his income from the tax service, under all the circumstances, was a misstatement of income, done with the intent to evade the payment of the tax.

The defendant, on the other hand, contends that there were certain expenses incident to the tax service, such as salaries, et cetera, and that putting down the sum of $750 on his 1953 return was not a wilful misstatement of his income from that service.

We come next to the sixth and last count of the indictment, which relates to the calendar year 1954.

It alleges that the defendant unlawfully, wilfully, and knowingly attempted to evade part of the taxes owing by him by stating that the income of himself and his wife was $4,986.40, whereas their income for that year was $6,247.90.

Here, again, the Government contends that the defendant failed to report his full income from the operation of the tax service. The tax return filed that year for the taxpayer shows that he did include a schedule in which he listed as "Commissions, (1165) income tax returns" $1,105 and in which he listed as expenses under that the sum of $603.

The Government contends that the evidence adduced, together with the concession of the defendant, shows that instead of receiving $1,105 for preparation of income tax returns in that year, the defendant actually received $2,366.50; and that if you deduct the expenses taken by

him on his return of $603 for the operation of that tax service, it would show that he received as net income from that tax service in that year $1,763.50 as net income instead of $502 of net income shown on his return from that tax service.

The defendant again contends that he had certain expenses in connection with the operation of the tax service in that year. However, the defendant listed on his return his expenses but, says the Government, he did not list his full income from the service, and, therefore, he wilfully misstated his income with the intent of evading the tax due thereon. The tax is due on the net income after expenses. But if the taxpayer properly listed his expenses in the 1954 return but failed to report the total receipts made by him in that year from that service, then he has failed to show what his actual net income was in that (1166) year from the operation of the tax service.

Those are the six counts of the indictment.

Now, of course, if the taxpayer made a mistake in filling out his tax return, this would not be a wilful evasion of taxes and, so, in order to find the defendant guilty on Counts 5 and 6 of the indictment, the jury must be prepared to find that, beyond a reasonable doubt, the defendant understated his net income from the tax service after all expenses incident thereto, with the intent to evade the payment of income taxes.

The misstatement of income in the income tax return would not alone be sufficient for a conviction. The mere failure to fill out a schedule, or to give an address for dependents is not alone sufficient for a conviction. For the jury to convict, it must find (1) that the taxpayer misstated his taxable income; and (2) that he did it intentionally and wilfully and with an intent to evade the payment of taxes which he knew to be due.

Charge of the Court

I have reviewed certain of the evidence in this case so as to be of some assistance in pointing up the issues involved. I have not attempted to review all of the evidence, but you must, of course, consider (1167) all of the evidence in reaching your verdict in this case. If I have made any misstatement of the evidence which does not accord with your recollection of it, you must disregard such statement by me. So also statements of counsel are not evidence. It is your recollection of the evidence and not any statement, or statements of counsel, which must govern you in the determination of the issues in this case.

Now, what is the statute which the defendant is alleged to have violated? The Federal Code provides in effect that:

> * * * any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony * * *.

In order to establish a case against the defendant under this statute, the Government has to prove two things against the defendant with respect to each count:

(1) That a tax on income was due and owing by the taxpayer; and

(2) That the defendant wilfully and knowingly attempted to evade payment of it.

(1168) The crime is complete when the taxpayer wilfully and knowingly files a false and fraudulent return with an attempt to defeat or evade any part of the tax due the United States. It is not necessary for the Gov-

ernment to prove an evasion of the entire amount alleged in the indictment; the Government's proof is sufficient if it shows beyond a reasonable doubt that any substantial portion of the defendant's tax liability had been wilfully and knowingly evaded by the taxpayer.

The Internal Revenue Code requires that the taxpayer report all of his taxable income in a given year in his tax return. However, the fact that a taxpayer fails to list all of his income in his tax return, or has listed as dependents persons who are not dependents does not necessarily mean that a defendant is automatically guilty of wilfully attempting to evade the income tax laws.

In addition to establishing an understatement of income, the Government must establish an element of wilfulness—that is, a deliberate intent to defraud the Government by depriving it of the income tax properly due.

You will see that the indictment charges (1169) that the defendant "wilfully and knowingly" attempted to evade the taxes payable by him. The term "wilful" can be defined as an intentional knowing or voluntary act as distinguished from an accidental act. A wilful act is one which is done with a particular purpose. When specifically related to income tax evasion "wilful" means that the defendant must have acted in the way he did with the intent and purpose of keeping from the Government the tax imposed by the income tax laws.

In determining whether the defendant acted wilfully, it is not sufficient if all that were shown is that he is stubborn, stupid, careless or negligent, or even grossly negligent. A defendant is not wilfully evading a tax if he is merely careless about making out his or her returns. He is not wilfully evading if all that can be shown is that he has made an error of law, or that he made an error of fact, and did it without an intentional purpose of keeping from the Government a tax owing to them.

I would point out that the civil liability for taxes is quite different from the imposition of criminal penalties. A person who files an incorrect return may be assessed the additional amount and this (1170) amount may be collected by the Government with interest and penalties. That is the recovery of a tax in a civil proceeding.

To impose a criminal penalty, however, it is necessary that the Government establish what might be called a criminal intent, that is, that the acts which were done by the taxpayer were done knowingly and with the wilful intent that by doing those acts, he would deprive the Government of an amount of tax which he himself knew was owing to the Government; and that he did this deliberately with the knowledge that the acts which he was doing were wrong and were designed to escape the payment of taxes which he knew were owing to the Government.

You will, therefore, with respect to each count of the indictment return a verdict of guilty or not guilty. If you find that the Government has established, beyond a reasonable doubt, that the defendant, with respect to a particular year, had knowingly and wilfully understated his income, or had knowingly and wilfully claimed as dependents persons who were not his dependents, and if you conclude that the Government has established, beyond a reasonable doubt, that the defendant did this knowingly and (1171) wilfully with an attempt to evade and defeat part of the income tax owing by him, then you may find the defendant guilty on that count of the indictment to which those facts relate.

If, on the other hand, you do not find that the Government has established beyond a reasonable doubt that the defendant knowingly and wilfully understated his income, or knowingly and wilfully took as dependents persons

who were not his dependents, or that the acts done by the defendant, and the returns filed by him, were not done by him knowingly and wilfully with an attempt to evade any income tax owing by him, then on that particular count of the indictment, you should acquit the defendant.

In determining the question of intent, you may consider all of the evidence in the case to determine whether it adds up to a pattern of wilful intent to evade the tax laws. You may also consider the proper inferences that can be drawn from the evidence.

It is obviously impossible to ascertain or prove directly what were the operations of a person's mind. You cannot look into a person's mind and see what his intentions were. But a careful and intelligent consideration of the facts and circumstances shown (1172) by the evidence in any given case enables us to infer with a reasonable degree of accuracy what another's intentions were in doing or in not doing certain things.

We are in our affairs of life continuously called upon to decide from actions of others what their intentions or purposes were. And experience has taught us that frequently actions speak more clearly than spoken or written words. The existence of an intent to commit a crime other than income tax evasion is not the intent necessary to convict the defendant here. A specific intent to evade the income tax laws must be shown.

What we are really trying to determine here is what are the facts:

Did the defendant understate his income?

Did the defendant claim as dependents persons who were not his dependents?

Did the defendant, if he did those acts—and if you find that he did them, beyond a reasonable doubt—do them

with the wilful intent of evading income taxes owing by him?

Both the facts and the intent must be proved beyond a reasonable doubt in order to justify a conviction.

(1173) Now, out of all of the evidence in the case, how do you determine the truth? When you search for the truth, you use your plain everyday common sense. You have seen the witnesses on the stand and observed their manner of giving their testimony. How did the witness impress you? Was he frank? Did his version appear to be straightforward? Did he try to hide some of the facts? Was the witness interested in the outcome of the case?

What degree of credit you should give to a witness's testimony should be determined by his conduct, manner of testifying, and his relation to the controversy.

The facts that some of the witnesses for the Government are Government agents does not entitle their testimony to any greater weight or any less weight than that of any other witness. You will judge their testimony in the same way that you would judge the testimony of any other witness. The credibility of any witness is for you and for you alone to determine.

If you find that any witness has wilfully testified falsely to any material fact, you may reject his entire testimony or accept only that part (1174) of it which commends itself to your belief. What you accept or reject as truthful and believable is up to you.

I have sought to avoid any comment which might suggest my personal views as to the guilt or innocence of the defendant or the conclusions to be drawn by you from the testimony. I have pointed up the issues, and you are to decide the issues of fact. You are not to assume that I have any views as to the guilt or innocence of the defendant. The determination of that question is your sole and exclusive responsibility.

If in the course of these instructions I made any reference to any testimony which does not accord with your recollection, you are to disregard that assertion by me. The actions of the Court during the trial in ruling upon motions or in ruling upon objections or overruling objections, or in sustaining objections, are not to be taken by you as any indication of the guilt or innocence of the defendant. Those were matters of procedure and law with which the jury has no concern. You have the determination of the issues of fact.

You are instructed that the question of (1175) possible punishment of the defendant in the event of conviction is no concern of the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence in the event of conviction rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendant solely upon the basis of such evidence.

If you do not conclude, beyond a reasonable doubt, that the defendant is guilty on the charges contained in the indictment, then with reference to any such charge you should not hesitate to acquit the defendant. If you do conclude that the defendant has been proved guilty, beyond a reasonable doubt, of the charges contained in the several counts of the indictment, then, with reference to those counts on which you so find, you should not hesitate to convict the defendant, as a warning to others that a crime of this character cannot be committed with impunity.

There are twelve men and women on this jury. Any verdict must be the unanimous verdict of all. In the Federal Court, a 9 to 3 or a 10 to 2 verdict is not a good verdict. Therefore, the verdict must be unanimous.

Exceptions to Charge

(1176) I would point out, however, that no one should enter upon the deliberations in the jury room with such pride of opinion that he or she would refuse to change it if convinced by intelligent argument on the part of another juror or jurors that they are right. Discussion, deliberation and consideration of the views of fellow jurors is part of our democratic process.

However, you are not to do violence to your own well-founded opinion. You are entitled to that opinion after discussion and deliberation. In other words, each one of you must decide the case for himself or herself after thoroughly reviewing the evidence and exchanging views with your fellow jurors.

This case is an important one to the Government; it is an important one to the defendant. I will submit it to you with every confidence that you will fully measure up to the oath which you took as members of the jury to fairly and impartially and without fear or favor decide the issues submitted to you.

Are there any exceptions to the charge?

Mr. Bolan: None by the Government.

The Court: Any exceptions to the charge, Mr. Feldman?

(1177) Mr. Feldman: This is not in the nature of an exception, your Honor, but in discussing the 1950 situation you mentioned that the second payment of $100 was a cash payment, and I think we can all agree that it was not, that there was a check involved.

The Court: I am glad you corrected my misstatement, sir. That shows how I forget.

Mr. Feldman: And that check was deposited in the stationery or candy store account.

The Court: That is correct.

No exceptions to the charge?

Mr. Feldman: As such, no.

The Court: Then I am glad that you corrected me.

You may swear the marshals.

Mr. Bolan: There are two alternates, your Honor.

Mr. Feldman: Your Honor, are you going to take up the requests separately?

The Court: Well, I have passed upon all the requests, having denied some of the requests in the form submitted. I have considered all the requests submitted by both sides, and I think I have incorporated them to the extent that they were proper in (1178) my charge.

Mr. Feldman: Then I misunderstood the Court, and I mean no interruption to the orderly procedure, but I have exceptions to the charge, but I thought that you asked whether there were any additional requests.

The Court: Have you any separate requests to charge?

Mr. Feldman: Yes, sir.

The Court: I have already considered those that you have submitted, and we will not go over those as some of them have been incorporated in my charge.

Mr. Feldman: Oh, yes.

The Court: And some in different language.

Mr. Feldman: I am not going to repeat those.

The Court: Have you any further requests to charge?

Mr. Feldman: Yes, your Honor, I do, sir, and that is with reference to this question of dependents. I respectfully request the Court to instruct the jury that for the purposes of the case and as a matter of law an illegitimate child and a legitimate child are the same in the eyes of the law.

The Court: I will so instruct the jury, that (1179) an illegitimate child who is supported—

Mr. Feldman: Yes—oh, I mean all the other requirements.

The Court: —by his parents—

Mr. Feldman: Yes.

The Court: —is the basis of an exemption just as a legitimate child.

That raises the question as to whether there is such a child and where it was supported.

Mr. Feldman: And in discussing the 1953 and 1954 returns, your Honor, in stating the proof of deductions, the Court made no mention whatever of the testimony in this case as to the payments received for work done in the defendant's tax service by Noel.

The Court: The jury will certainly consider that testimony as to the payments received by that witness and the other people who worked there.

Mr. Feldman: And would the Court be good enough to instruct the jury that the verdict in this case has nothing whatever to do with the right of the Government to collect any taxes that may be due?

The Court: That is right. A civil liability is quite different from a criminal liability, as I pointed out.

(1189) In the civil liability, the Government just has to prove that the amount is owing and collect it; in a criminal liability involving a criminal penalty, the Government has also to prove the wilfulness which I have defined in my charge.

Mr. Feldman: And I respectfully request the Court to charge the jury that generally the Government could determine costs of the defendant for the preparation of the returns.

The Court: What is that? I do not quite understand it.

Mr. Feldman: I will go over it slowly, as I was reading from my notes made during the course of the Court's charge.

The Court: Yes.

Exceptions to Charge

Mr. Feldman: I respectfully request the Court to charge the jury that generally the Government could determine the costs to the defendant for the preparation of the returns which he handled in his tax service, and all the other expenses of running the tax service business independently of the defendant, or independent of his help, and if it had failed to make a reasonable attempt to make such an investigation as to his costs and expenses then that is an element for (1181) the jury to consider, and if they find the Government did not check up its notes on that point, that the jury must bring in a verdict of not guilty in favor of the defendant.

The Court: I decline to make any such charge as that. I think my charge sufficiently covered all of the elements which the jury should take into account.

Mr. Feldman: I respectfully except, your Honor.

I have no further requests.

Mr. Bolan: One suggestion, if I may, your Honor, and that is if this is the appropriate time to dismiss the alternates?

The Court: I will first swear the marshals; or have the marshals sworn.

Mr. Bolan: I see.

The Court: And send the jury out under their escort and then I will discharge the alternates afterwards. That is due to my extra precaution in having the alternates stay until the jury goes out and commence their deliberations, as I sometimes wonder whether hearing a long charge from the judge may create some heart attack on the part of some juror, and I do not (1182) want to take any chances.

(Marshals sworn.)

The Court: Will you please give to the marshal the exhibits which have been received in evidence and a copy of the indictment?

Exceptions to Charge

Mr. Feldman: Your Honor, what disposition is made usually by the Court with regard to the bill of particulars?

The Court: I happen to have it here. Do you want it sent in to the jury?

Mr. Feldman: I think it would be a good idea.

The Court: Any objection, Mr. Bolan?

Mr. Bolan: No, your Honor, I have no objection. I will have to get a copy.

The Court: I have a carbon copy of the bill of particulars. I don't know who has the original.

Mr. Bolan: It may be in the Government's file, your Honor, and I will check.

The Court: All right.

Here is a copy of the consolidated indictment, and I may say this carbon copy is the bill of particulars given by the Government to the defendant, with respect to which years and pertaining to the items which they said were omitted from the returns. If (1183) there is no objection, I will send that in to the jury. It may make it easier for one to understand the indictment.

All right, the jury will be escorted under the services of the marshals. The two alternates will please stay here.

I may say that I will be here in the court if any question comes up, in which event you will please just report to the marshal.

(At this point, 11:35 a. m., the jury retired from the courtroom and commenced their deliberations.)

The Court: At this point, I want to thank you two ladies for serving as alternate jurors. I know how you feel, just exactly the way that the football player feels

when he sits on the bench all throughout the season and never gets a chance to get in the big game, but nevertheless you performed a real service by being here, and if you want to step outside to the robing room, I would like to meet each one of you personally and thank each one of you personally for your presence.

The Court will take a recess.

(Short recess.)

(1183a) (The jury was escorted to lunch at 1:00 p.m., and returned to 2:00 p.m. to resume their deliberations.)

(The following proceedings took place 2:35 p.m., when the jury returned to the courtroom:)

The Court: I have received a message from the jury that says the following:

"Is the jury to report a single verdict for an entire count or a separate verdict to each part of each count?"

That is the first question. The jury will return a verdict on the count itself, guilty or innocent of the count.

Now, then, the next question:

"If the first alternative is true"—as I said it is—"does the jury understand that a unanimous verdict of guilty to any more or more parts of any particular count will be reported to the Court as a verdict of guilty to the entire count?"

That, of course, involves the question that in some of the counts there were various items which were said to have been understated or not properly reported with a wilful intent to evade the taxes.

As I said in my charge, and I repeat, and (1183b) this applies on any count:

"It is not necessary for the Government to prove an evasion of the entire amount alleged in the indictment; the Government's proof is sufficient if it shows, beyond a reasonable doubt, that any substantial portion of the defendant's tax liability had been wilfully and knowingly evaded by the taxpayer."

In other words, if in any one of those counts the jury reaches the conclusion that the Government has established beyond a reasonable doubt that any substantial portion of the tax liability referred to in that count has been wilfully and knowingly evaded by the taxpayer, then on that count the jury may find a verdict of guilty.

It is not necessary to decide on each of the items referred to in the bill of particulars; it is only necessary to decide whether or not on the particular count which relates to a particular year, the Government has proved beyond a reasonable doubt that a substantial portion of the defendant's tax liability had been wilfully and knowingly evaded by the taxpayer.

Are there any exceptions to the charge?

Mr. Feldman: There are, your Honor.

It is my understanding, and I respectfully (1183c) request the Court to instruct the jury that with regard to each item in each count the Government has the burden of proof as to each item.

The Court: That is correct; I so charge.

Mr. Feldman: And in addition to that, your Honor, it is important, I believe, for the jury to understand that in taking into consideration the issue of wilfullness, that issue is affected by the amount of the tax involved, and that the amount of the alleged deficiency or alleged defi-

ciency in tax is an item to be taken into consideration on the issue of wilfullness.

The Court: They can take it into account on the question of wilfullness—

Mr. Feldman: In other words, if a small amount—

The Court: —but if the Government alleges that in a particular year the defendant failed to report X dollars and there is Item Y dollars in this item and Z dollars in this item, and the Government proves beyond a reasonable doubt that the defendant failed to report the X dollars with the intent to evade taxes, then the fact that the Government has not established that he failed to report Y and Z dollars does not require a (1184) verdict of innocence.

Mr. Feldman: But to use a ridiculous example, your Honor, if Item X was $5, Y a hundred and Z a thousand, the jury could take into consideration the fact that the $5 item is no indication of wilfullness, that amount.

The Court: I would say that they could take that into account, that it is no indication of wilfulness, but they could take all of it into account in deciding whether there was proof of wilfullness. You are right in that.

Does that answer the question of the jury?

The Foreman: I think that satisfies us.

The Court: Thank you.

The jury may then resume its deliberations.

(At 2:45 p.m., the jury thereupon left the courtroom and resumed their deliberations.)

Discussion

(The following proceedings took place in the robing room at 2:45 p.m.:)

The Court: To make the record complete, I will direct that there be filed with the record of this case the Government's requests to charge constituting twenty-five requests, the defendant's requests to charge constituting requests I through V, which have (1185) certain subdivisions in each of those parts.

As previously stated, I considered all of the requests to charge and to the extent that I considered any of them proper, I incorporated the substance of them in my charge.

I, therefore, have denied the requests of both the Government and the defendant in the form stated in their requests, and and an exception is granted.

Mr. Feldman: Your Honor, off the record?

The Court: Yes, off the record.

(Further discussion off the record.)

(At 6:45 p.m., the jury was escorted to dinner by the marshals and returned to 8:00 p.m. to the court house to resume their deliberations.)

(At 11:05 p.m., the jury returned to the courtroom and the following proceedings took place:)

The Court: Ladies and gentlemen:

I don't like to interrupt your deliberations. You have been at it a long time and I know that you are considering the matter very seriously.

The only reason I called you back is this:

If it looks as though your deliberations are going to take considerably longer, maybe you will want (1186) to

have a night's sleep, and the United States Marshal has to make the arrangements and informs me that if we are to make hotel reservations for the jury, we should make them now, otherwise it may be impossible to make the necessary reservations.

Now, that is no indication necessarily that we should do that. I simply say that so that the jury may understand that if we continue for a number of other hours, we can't get hotel reservations, and there is nothing that we can do about it.

If there is anything that the Court can do, any further charges to you, further instructions, or if there is any testimony you want read, or anything like that, of course, that can be done, but all I am indicating is that if we are to get accommodations for the jury, hotels being what they are, why, I don't want to reach the situation at midnight where somebody says, "Let us be put up for the night," and then have the Marshal tell me that we can't do it.

So, the Marshal sitting over there (indicating), tells me that he has to know now or pretty soon what is wanted.

Now, with that I am going to suggest that the jury return again to their room and try to reach a de- (1187) termination on what they want.

If you want to continue with your deliberations or quit now, all right. I mean there is no reason why you should not go to the hotel for the night and resume tomorrow. I will be here as long as you want. I have been in the court until three o'clock in the morning sometimes, waiting for a jury to return a verdict, but I know sometimes the people feel an imposition on them not to get a night's sleep.

That is the reason, and we are thinking of your comfort at this time. Therefore, I suggest that you return

to the jury room and decide what you want to do, whether you want to continue your deliberations or you would like to try to have me get hotel reservations for you.

Now, if there are any questions you want to submit to the Court, any problems or instructions, write them out and give them to the Marshal, and I will be glad to give you such instructions as I can.

Deliberation and discussion is the great thing in our jury system with an attempt to reach a verdict. Of course, if you do not reach a verdict it simply means that the case has to be retried again with the (1188) expense and delay to all, so if the jury will retire again and let me know what you want to do.

Mr. Feldman: I am sure your Honor did not mean to indicate that any juror should reach a verdict just for the purpose of saving expense and avoiding delay.

The Court: No, deliberation and discussion, and be careful in reaching a verdict, which should be the honest verdict of the jurors, as that is always desirable.

All right, if the jurors will now retire, and if you have any messages, just give them to the Marshal.

The Foreman: May I address the Court?

The Court: Surely.

The Foreman: Is it possible to get a copy of the testimony?

The Court: It can be read to you but it can't be given to you as such. Under the rules, it can be reread to you here in the courtroom, and if you want any testimony or any witness's testimony reread, or anything like that, tell us what you want and it will be reread to you right here.

The Foreman: I believe the jury would like (1189) to have reread Mr. Noel's testimony.

Discussion

The Court: Noel's testimony, is that correct?

The Foreman: Yes, sir.

The Court: Then we will have that testimony reread.

Mr. Bolan: Could I also make a request with respect to the request that the jurors made when they came in at three o'clock, and that is that I would request that the charge be made to the jury that it is not——

The Court: First of all, I am going to have the testimony reread that the jurors want.

Now, Fred, will you get the testimony which is out in the robing room, I think.

Now, we know what overtime is. This is the third night that I have been here, not on this case but one night on the charge, and another night on other things.

However, I might say that while you have been working, I also have been working on this other case which starts next week and which involves millions of dollars, to try to get a little ahead of time.

Now, Mr. Reporter, if you will please read Mr. Noel's testimony.

(1190) (Testimony of the witness Noel read to the jury.)

The Court: All right. Is there anything else you desire at this time?

(No response.)

The Court: All right, then, you can please let me know if you, after you retire to your jury room if you want me to try to get hotel reservations for you, but if you do not, that will be perfectly all right, too.

Also, if you have any other requests at any time, just write them out and give them to the Marshal and we will be here.

The Foreman: Thank you very much.

Discussion

The Court: Ladies and gentlemen, thank you for the great attention you are all giving to this matter. You are performing a real patriotic service.

(At 11:35 p.m., the jury retired to resume deliberations, and at 12:50 p.m., the following proceedings took place in open court:)

The Court: At the request of the jury, I have made hotel reservations for the jury, and I understand that a Carey car will be here in about twenty minutes to take the jury to the hotel for the night, (1191) and since it is going to be rather late before you get to bed, I am ready to reconvene any time tomorrow morning you say. I leave it to the jury. What do you want to do about it, eleven o'clock, nine o'clock, eight o'clock?

The Foreman: It is the verdict of the jury that we reconvene at ten o'clock.

The Court: The verdict of the jury is ten o'clock?

The Foreman: Yes, sir.

The Court: I am very glad we got a verdict out of the jury. We will then reconvene at ten o'clock tomorrow morning. I hope you have as pleasant a night as possible.

And, of course, if you ladies and gentlemen reach a verdict on any of the counts of the indictment, why, you can report the verdict to the Court as soon as you reach it. I think you probably are not going to reach a verdict tonight and you want to go to the hotel, so all I can say is pleasant dreams.

The Foreman: The jury would like to extend an apology for keeping everybody here up so late.

The Court: You are performing the greatest public service and for this attention you should be (1191a) proud, and in the further realization that you are taking this seriously, and it is a wonderful thing.

(Adjourned to October 19, 1956, at 10:00 a.m.)

Verdict

(1192) New York, October 19, 1956,
10:00 o'clock a.m.

(At 12:50 p.m., the jury returned to the courtroom and the following proceedings took place:)

The Court: Now, ladies and gentlemen, I have received a message from the jury which reads as follows:

"The jury has reached a unanimous verdict on each of the five counts. The jury cannot reach a unanimous decision on the sixth count."

The jury has now been considering this case for over twenty-five hours, and I think they have devoted a lot of conscientious attention to it, and I will take the verdict on the first five counts and will enter a disagreement on the sixth count.

You may take the verdict, Mr. Clerk.

The Clerk: Members of the jury, please answer as your names are called.

(Roll of jurors called.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: On the first five counts, we have, (1193) sir.

The Clerk: How do you find?

The Foreman: On the first count, the jury finds the defendant guilty as charged; on the second count, the jury finds the defendant guilty as charged; on the third count, the jury finds the defendant guilty as charged; on the fourth count the jury finds the defendant guilty as charged; on the fifth count, the jury finds the defendant not guilty.

The Court: And on the sixth count the jury is unable to agree?

The Foreman: Yes.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded:

You say you find the defendant Acy Lennon on Count 1 guilty, on Count 2 guilty, on Count 3 guilty, on Count 4 guilty, on Count 5 not guilty, and on the sixth count unable to agree on a verdict?

The Jurors: Yes.

The Clerk: And so say you all?

The Jurors: Yes.

The Court: Do you wish the jury polled?

Mr. Feldman: I do, your Honor, on each count and on each item of the counts.

(1194). The Court: There are no items in the counts to be reported on.

I will ask the jury to be polled on their verdict as it has been given; that is, if they find the defendant guilty on Counts 1, 2, 3, and 4, of the indictment, and not guilty on Count 5 of the indictment.

You may poll the jury, Mr. Clerk, to ascertain if that is their verdict.

Mr. Feldman: May I respectfully except and point out on the record and to the Court that there are two items in each of the first three counts, and the fourth, your Honor, and that——

The Court: As you know, defendants are not found guilty or innocent on items; they are found guilty on counts of an indictment.

Mr. Feldman: But the items, if your Honor please, are not interrelated.

The Court: That may be, but the verdict is guilty or not guilty on the count. I have already said what the.

finding of the jury is and as given by the foreman, guilty on Counts 1, 2, 3, and 4, and not guilty on Count 5.

You may poll the jury and ascertain if that is their verdict.

(1195) Mr. Feldman: I respectfully except.

(Each one of jurors indiyidually polled and each juror confirmed the above as his or her verdict.)

The Court: Any motions?

Mr. Feldman: There are, your Honor.

The Court: Yes?

Mr. Feldman: Your Honor, I move to set aside the verdict of the jury on the first four counts, on all of the grounds previously stated, and in addition—incidentally, when I say on all of the grounds previously stated, I assume the Court is aware of the motions that were made at the close of the Government's case, and that by failing to enumerate them I am not excluding any of them.

And, in addition, if your Honor please, I would at this time make an additional motion to set aside the jury's verdict as not based on the evidence, the Government not having established its burden of proof beyond a reasonable doubt.

The Court: Your motion is denied and your exception is noted.

Mr. Feldman: Now, at this time, if your Honor please, I should like to make an additional (1196) motion for a new trial, on the ground that in view of the minimum amount of tax involved in each of the years in question, that the length of deliberation of this jury, coupled with the suggestion by the Court of last night that a failure to agree would result in a new trial and at great expense to the Government.

The Court: I said at great expense to all parties.

Mr. Feldman: And indicated to the jury the necessity of reaching an agreement independent of the factors which were in the case; namely, the evidence and exhibits, and for these reasons, without waiving my rights for making a motion under the grounds I move for a new trial.

The Court: Your motion is denied and exception is noted.

I may say that this jury has conscientiously considered this case, and that at no time until I received this note have they ever indicated that they desired to be assisted, or that they were not conscientiously considering all of the evidence in the case. They have continued their deliberations for a long period of time at their own choice.

Any further motions?

(1197) Mr. Feldman: Not at this time, your Honor. There are other motions which I can make but which——

The Court: Any motions that are going to be made, you had better make now.

Mr. Feldman: Your Honor, I most respectfully point out to the Court, as has been done before, that we have in the first four counts a situation where we deal with a misdemeanor statute as well as with a felony statute, particularly 3616(a) as compared with 145(b) and under such circumstances, your Honor, I move that the verdict of the jury be set aside on the ground that it is impossible legally for the Court to determine, or for anyone, for that matter, to determine whether or not the first four counts —I believe that is correct—whether the first four counts should have been submitted to the jury at all for the reasons stated to the Court, and the Court will recall that I pointed out at a previous motion the disparity of the two items: namely, the dependency item as compared to

the unreported income item as being completely unrelated with the dependency count, being the 3616(a) count.

The Court: I do not understand that it is necessarily so.

Mr. Feldman: And the unreported income as (1198) well, being the 3616 count, in view of the fact that there was no evidence presented in this case of the concealment of any crime whatever, and which effectively outlaws the jury's verdict on those four counts.

The Court: You mean the statute of limitations has run on those counts?

Mr. Feldman: On the indictment, that is right.

The Court: I have already passed upon that application for you. I find that the statute of limitations has not run and I have so ruled, and I so rule again.

Mr. Feldman: I respectfully except.

The Court: Is the Government ready for sentence?

Mr. Bolan: Yes, the Government is ready for sentence, your Honor.

The Court: Is the defendant ready for sentence, or would you like to consider the matter?

Mr. Feldman: I would like to think a little while about that.

The Court: Let me ask you this, Mr. Bolan: Has the defendant any criminal record?

Mr. Bolan: No, your Honor, not to my know- (1199) ledge.

The Court: Is he on bail?

Mr. Bolan: I don't believe he is; no, he is not.

Mr. Feldman: He is released in his own recognizance.

Mr. Bolan: Released in his own recognizance and the Government would move to have bail set.

The Court: Is there any desire on the part of counsel for the Government or the defendant that before passing sentence the Court get a pre-sentence report through the Probation Department, or is that unnecessary?

Mr. Feldman: Well, your Honor, I would consider that at this point entirely prejudicial, in view of the fact that the Government has a pending indictment and——

The Court: I mean if you do not want me to do that, I will then set the sentence in this case for Monday morning, October 22nd, at ten o'clock in this room, and I will direct that the defendant be remanded and bail be fixed for him in the sum of $5,000.

Mr. Feldman: Your Honor, I would most respectfully point out that the total amount of tax in- (1200) volved here is $1400 over the six-year period.

The Court: But the total amount of fine that may be imposed is $20,000.

Mr. Feldman: Quite true, your Honor.

The Court: I mean in the case of a man who is guilty of the crime, it is not a question of how much he got away with. I mean this is a serious offense and I will fix bail at $5,000. I do that so that the defendant until sentence, if he puts up the bail, can be released on bail; that is, until the sentence is imposed, and sentence will be imposed on Monday.

Mr. Feldman: Well, your Honor, in view of the fact that the type of seriousness and consideration that the jury has given to this case——

The Court: By mentioning $20,000, I do not indicate anything other than the maximum fine, you understand that?

Mr. Feldman: I understand that, your Honor, but I point out to the Court very frankly in relation to the crime committed or alleged to have been committed, that this is the highest bail that I have ever heard of, sir, being set.

The Court: $5,000?

(1201) Mr. Feldman: Yes, sir, in a situation like this. Mr. Bolan, Your Honor—

Mr. Feldman: And I point out to the Court the tax amount involved.

The Court: I am perfectly willing to remand the defendant without bail if you feel the bail set is exorbitant.

Mr. Feldman: Your Honor, what gain is there to have—

The Court: The defendant has been convicted of a felony for which he can serve a jail sentence and under those circumstances it seems to me that it is proper that he be released on bail.

I will direct that the defendant be remanded and fix bail at $5,000. Sentence will be imposed Monday morning at ten o'clock, in this room.

Mr. Feldman: I would direct the Court's attention to the fact that apparently there is some statement coming from the jury that the jury wishes to deliver to the Court, and the jury has not as yet been discharged.

The Court: The jury will now be discharged.

Mr. Feldman: Well, wouldn't it be appro- (1202) priate to hear what the jury has to say, your Honor?

The Court: What the jury has to say after being discharged is not a part of the record, as you know.

Mr. Feldman: I respectfully except.

The Court: And that the jury had been polled at your request, and they have already confirmed their verdict on the record.

Mr. Feldman: Your Honor, I would point out that the statement that I indicated to your Honor that the jury wished to make was before the Court indicated that it was being discharged, and it is for the purposes of this case that I ask the Court to hear them.

The Court: Ladies and gentlemen of the jury:

I want to thank you very much for the careful consideration you gave to this case. I have never seen a jury which has been more careful and conscientious in the performance of its duty, and we owe a debt of gratitude to men and women such as you who are ready to spend your

time carefully and conscientiously in the performance of your duty.

I think if I may say so that you reached a very fair verdict in this case, and we all appreciate what you have done. You are discharged with the thanks (1203) of the Court.

I take it that the jurors do not have to report for further jury duty.

The Clerk: They have an alternative, if they wish to return on Monday, they may, your Honor.

The Court: Any member of this jury who wishes to return for jury duty on Monday may do so, and those of you who don't are excused until you are called again.

(The jury was excused.)

The Court: Court stands adjourned until ten o'clock Monday morning.

(Adjourned to October 22, 1956, at 10:00 a.m.)

(1204) New York, October 22, 1956;
10:00 o'clock a.m.

The Clerk: United States of America vs. Acy Lennon. Both sides ready, gentlemen?

Mr. Bolan: The Government is ready.

Mr. Feldman: The defendant is ready.

The Court: All right, Mr. Bolan.

Mr. Bolan: Well, your Honor, the Government, as usual, has no specific recommendation one way or another. The Government does have a few comments to make, particularly with respect to Congressman Powell's statement over the radio Friday that your Honor gave the defendant one of the rawest deals a man ever got.

The Government considers this statement to be completely irresponsible, reckless and outrageous, particularly when coming from a man in such a prominent public position.

The defendant was given fair treatment by the Government; he was given a fair trial lasting over two weeks, and he was given the utmost consideration by the jury which deliberated for over 25 hours before reaching a verdict. The statement by the Congressman (1205) coming before sentence, can be considered as nothing but an attempt to put pressure upon the Court, and the Government deplores such a serious indiscretion on the part of Congressman Powell.

Now, with respect to the charges concerning which the defendant has been convicted, I think the trial has revealed that the defendant's attempt to evade taxes was not the mere going into an isolated attempt; the trial showed that this man at every single opportunity sought to cheat and evade taxes owing by him not only with respect to omissions of income but with respect to his deductions on each of his returns. There is hardly an item on any of those returns that can be considered an honest reporting of the deductions or of income.

Now, the Government does not make any recommendation of leniency. The Government thinks that this man deserves no leniency. His attempt to evade taxes had been wilful and that of a deliberate person. And I may point out that with respect to the item of the Tenants Protective Association, concerning which the Court ruled that there was not sufficient proof to go to the jury, that although there was not sufficient proof to go to the jury (1206) that transaction again indicates that this defendant was engaged in something that was not lawful. Your Honor recalls that no one seemed to recall who signed this $3000 check; no one seemed to recall what happened to the money. Statements by witnesses completely contradicted each other. Congressman Powell and his good friend Mr. Klein gave completely opposite stories as to a

conversation that they had, and either the Congressman or Mr. Klein deliberately lied.

Now, of course, this cannot be held against the defendant but the whole transaction was one in which the defendant had a direct participation and, as I say, is again an indication that this man, apart from his income tax evasion, also participated in other transactions that had a very distinct unpleasant aroma.

As I say, there can be no doubt but the defendant's actions here were completely deliberate and wilful and that as a result he is deserving of no leniency on that score.

(1207) The Court: Mr. Feldman.

Mr. Feldman: Well, your Honor, if any resentment is to be expressed, I am going to express it now. I do not think that in a proceeding before the Court prior to sentencing of the defendant that the court should be used as a political forum. I think that all of us are entitled to our opinions, and those of us who are not part of the judicial system can give vent in language of their own choosing, and that that should not influence any judicial deliberations, or the imposition of any sentence. And in that connection I would be remiss in my duty if I did not respond to the charge since I am defense counsel and apparently would be remiss in the discharge of that duty to my client if I did not in response point out to the Court that the verdict of the jury was hardly pronounced but that the United States Attorney for the Southern District of New York hastened into print with the statement that the investigation of Congressman Powell was still continuing.

The Court: Well, let us leave the politics out of this thing.

Mr. Feldman: I respectfully point out to the Court that Congressman Powell was not on trial in (1208) this case, and that the Tenants Protective Association issue in this case was dragged in by the heels for the purpose of creat-

ing a political atmosphere and this Court during the course of the trial had to go to some bounds to point out to the jury that they were not to be influenced by that sort of thing, and that they were to be influenced only by the evidence in this case.

And to this very day, your Honor, I, as an experienced attorney, and your Honor, as an experienced attorney and jurist as well, will recognize the fact that we will never be able to determine what this effort by the Government did to affect the jury in its deliberations, and I point out that this effort by the Government dragging the Congressman Powell issue in, in an effort to have the Court impose a stronger sentence is further illustrative of the Government's plan to punish Congressman Powell by making——

The Court: There is no such intention, no such intention on the part of the Court, and if politicians want to make indiscreet statements over the radio, they will be regarded as just political statements by me, but they have no relevance in this proceeding.

(1209) All I am concerned with here is the guilt or innocence and the sentencing of this particular defendant.

Mr. Feldman: And if I may——

The Court: I was shocked that any member of Congress would take to the radio and announce that a man in this court did not get a fair deal, but I am not going to hold it against this defendant.

Mr. Feldman: I am pleased to have the Court announce that on the record.

The Court: All right.

Mr. Feldman: Because it was a matter of grave concern to me.

The Court: All right. Now, let us get down to business.

Judgment and Commitment

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

No. C 148-204, C 150-247

—o—

UNITED STATES OF AMERICA

v.

ACY LENNON

—o—

On this 22nd day of October, 1956 came the attorney for the government and the defendant appeared in person and by counsel,

It is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly attempting to defeat and evade a large part of the income tax due and owing by him to the United States for the calendar years 1949, 1950, 1951 and due and owing by him and his wife for the calendar year 1952. (Title 26, section 145(b) U. S. C.). as charged in counts 1-2-3-4, and the court having asked the defendant whether he had anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

Judgment and Commitment

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of

Count One—One Year and One Day and fined $1000.
Count Two—One year and fined $1000.
Count Three—One Year.
Count Four—One Year.

Prison sentences on counts 1-2-3-4 to run concurrently with each other.

Defendant to stand committed until fines on counts one and two are paid or he is otherwise discharged according to law.

Bail continued pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshall or other qualified officer and that the copy serve as a commitment of the defendant.

/s/ ARCHIE O. DAWSON
United States District Judge

No. 3491

FILED
AUG 7 1957
JOHN T. FEY, Clerk

LIBRARY
SUPREME COURT, U.S.

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

ACY LENNON,

Appellant.

APPENDIX TO APPELLEE'S BRIEF

PAUL W. WILLIAMS
United States Attorney for the
Southern District of New York
Attorney for Appellee

THOMAS A. BOLAN
Assistant United States Attorney
Of Counsel

UNITED STATES COURT OF APPEALS
FILED
FEB 18 1957
DANIEL FINKELSTEIN
SECOND CIRCUIT

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Excerpts from Testimony

October 8, 1956

JOSEPH E. FORD for Government:

(305)

Re-direct examination by Mr. Bolan:

Q. Mr. Ford, in running your income tax service when, in relation to the beginning of the year, would income be earned from that service; when would the taxpayers come in to have their returns prepared? A. Approximately around the 15th of January.

Q. So on January 9th, 1951 would y u have been earning any income from your tax service? A. Not in the tax; very little, if any.

Q. So that the statement made in your affidavit (306) was a true statement, the affidavit that was just read; is that correct?

Mr. Feldman: Objection, if your Honor please, as to the form, as to whether it is true or not. That is a question for the jury to decide.

The Court: Objection sustained.

Q. Now, Mr. Ford, you testified——

The Court: You can ask him whether it was or was not a true statement, but don't put the words in his mouth.

Q. Was it or was it not a true statement? A. It was not a true statement.

Q. Well, let me rephrase the question.

The Court: It was not a true statement that he had no other money, no other income.

Q. Your sworn statement on January 9, 1951 is as follows:

"That the defendant on the other hand has only the income from his job."

Was that a true statement? A. That is a true statement.

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(348)

DAVID KENT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Bolan:

Q. Mr. Kent, what is your occupation? A. I am a builder, and I am in the real estate business.

Q. Do you know a man named Acy Lennon? A. Yes.

Q. Do you see him here in court? A. He is sitting on the right there (indicating).

Mr. Bolan: May the record show that the witness has identified the defendant, your Honor?

The Court: Yes.

Q. You are a friend of Mr. Lennon, are you not? A. Yes, sir.

Q. Also a friend of Congressman Powell? A. Yes, sir.

David Kent—for Government—Direct

Q. And Mr. Feldman has represented you in some legal matters, has he not? A. He has represented me in one legal matter.

Q. Now, would you please state the circumstances concerning your meeting of the defendant Lennon and when it took place. (349) A. In 1951, the month of June—well, it is an involved—would you be more specific as to how or what?

Q. Well, all right. You built the apartment project known as the Dorie Miller Apartment House? A. Yes.

Q. And in connection with that building you obtained the assistance of Congressman Powell, did you not? A. Well——

Q. Well, in connection with the sale of the Dorie Miller Apartments you obtained Congressman Powell's assistance? A. I obtained his endorsement of this project, yes.

Q. Well, now, will you tell us when you first spoke to Congressman Powell about obtaining his endorsement? A. In 1951, I had been trying to sell apartments in this cooperative through some brokers, and it wasn't—the sales were not successful and——

Q. Pardon me for interrupting. How many apartments were to be sold? A. 300.

Q. And how many did the FHA require to be sold? (350) A. 270.

Q. So you were attempting to sell— A. To sell——

Q. —270 of these apartments? A. That is correct.

The Court: I take it the building had not yet been built?

The Witness: No.

The Court: And you were trying to sell them in advance so as to get a FHA loan, is that the idea?

The Witness: Yes.

David Kent—for Government—By the Court

The Court: So you wanted commitments from the people that they would purchase the apartments, and it was based upon their purchases of these apartments?

The Witness: Yes, and I could then go to the FHA and say I have 270 or 300 purchasers.

The Court: Right.

The Witness: and then the FHA would then——

The Court: Loan the money?

The Witness: Loan the money.

The Court: And then you could go ahead with the building?

The Witness: That is correct.

The Court: All right.

(351)

By Mr. Bolan:

Q. And you had been unsuccessful in this endeavor prior to the time that you met Congressman Powell, is that correct? A. Yes.

Q. All right. Will you proceed with when you met Congressman Powell and what happened? A. I realized some time in June of 1951 that I would have to perk up sales if this place was to be built.

I called the Urban League, and I also called Congressman Powell, realizing that to my mind those were the two leading factors in the Negro population, and if I could get help from either one of them I could then proceed with the sales of these apartments.

Q. Dorie Miller was to be an interracial project? A. Yes.

Q. Is that right, sir? A. That is right.

I went to the National Urban League, couldn't see anybody there.

I called Congressman Powell's office. I stated my purpose and I was given an appointment at his office.

(352)

Q. And did you see him? A. I had an appointment—I went up to his office in Room 2 of 132 West 138th Street.

Q. That is at the Abyssinian Baptist Church, is that right? A. Yes. The first people I saw there were Mr. Hampton and Mr. Lennon.

I told them who I was and that I had an appointment with Congressman Powell, and Congressman Powell—it turned out that he was busy or he wasn't ready yet to see me, so that I spoke with Lennon and Hampton for about twenty minutes or a half hour about my purpose in being there.

Q. That was the first time you had ever met Mr. Lennon, is that right? A. Yes, sir.

Q. And will you proceed with what happened after that? Did you have a discussion with Congressman Powell as to his endorsement of this apartment house project? A. Well, yes, I spoke with him and told him that Section 231 would give Negroes an opportunity to indulge or to purchase apartments in a cooperative housing project, whereas in other projects they were—they just could not get in.

(353)

I told him that they would be the owners of those apartments and that the—well, he was familiar with the legislation, but I told him that I felt that this would be something that would be of advantage to the Negro population as a whole.

And he agreed that it would be helpful to those Negroes who would want to live in a nice area in the City of New York.

Q. And did he agree to recommend to his congregation that they purchase these apartments? A. He agreed to endorse the project, yes.

Q. And did you have any conversation with him as to who would sell the apartments? A. I first spoke—well, while I was waiting for Congressman Powell, I spoke to Lennon and Hampton about sales, especially William Hampton, and to my mind he is a very brilliant young man.

He was well aware of the economic and the sociological feature of the thing, and I told him that I was interested in somebody who would be—who would be able to handle the sales and he suggested himself.

Of course, Mr. Lennon was there, but they were both parties to this conversation.

(354)

Q. Well, I mean did Mr. Lennon participate in the conversation? A. Well, he was standing by. He was. I spoke to both Lennon and Hampton participated in it, yes.

Q. Well, did you speak to Congressman Powell when you went the next time and tell him of this conversation that you had with Lennon and Hampton? A. After I discussed with him the advisability of his endorsing this project, and he agreed to endorse it, I then asked him if it were all right with him for me to engage the services of Lennon and Hampton to handle the sales.

Q. And did you subsequently have a conversation with Lennon and Hampton as to their handling the sales? A. Yes.

Q. Incidentally, when you talked with Congressman Powell, was there any discussion as to whether the Abyssinian Baptist Church offices would be used for the sales of the apartments? A. I don't think so. There was no—that did not enter into it. I am reasonably certain that did not enter into the conversation.

Q. Well, now, did you have a conversation subsequently with Lennon and Hampton as to their selling (355) these apartments? A. Yes.

Q. And was there any mention in that discussion as to whether the Abyssinian Baptist Church would be used to sell the apartments? A. It probably did, yes. I mean I would state—well, this is about five years ago and I am reasonably certain, however, that the church, or Room 2 of the church would be used as the place where the apartments would be sold.

Q. And did you reach an understanding with Lennon and Hampton as to what their commissions would be on apartments sold by them? A. Well, the commission on apartments sold would be $15 per apartment.

Q. And did Lennon and Hampton subsequently sell the Dorie Miller Apartments? A. Yes, they sold the apartments in Dorie Miller.

Q. And how many did they sell? A. Approximately 225.

Q. Did there come a time when you paid Lennon and Hampton their commissions on the sales of these apartments? A. Well, I paid the Tenants Protective Associa-(356) tion——.

Q. Yes? A. $3,000 by check for the commmissions on the sale of 200 apartments, yes.

Q. And that check represented apartments sold by Lennon and Hampton, is that correct? A. Yes, Lennon and

Hampton, or whoever else might have been there at the time——

Q. Yes? A. —to sell them.

Q. And I show you Government's Exhibit 12 for identification, and ask you if this is the check to which you are referring? A. Yes, this is the check.

Q. And you turned this check over to Mr. Lennon, is that correct? A. Yes.

Q. And it was made payable to the Tenants Protective Association at the request of Mr. Lennon, is that correct? A. Well, it was made payable to the Tenants Protective Association because at our original discussion it was agreed that—well, it was agreed between Lennon and me that it was sold through the Tenants (357) Protective Association.

Q. Now, Mr. Kent, did you consider you were dealing with Lennon and Hampton or the Tenants Protective Association? A. Lennon and Hampton but——

Q. Did you know whether or not they were working for the Tenants Protective Association? A. They told me so. I didn't know that they were working.

Q. Did they represent themselves or did you go into the question of whether they represented themselves or the Tenants Protective Association? A. No, I didn't go into the question. They told me that the apartments would be sold through the Tenants Protective Association, and that was enough for me.

Mr. Bolan: I offer this check in evidence, your Honor.

The Court: Any objection?

Mr. Feldman: Well, I object to this, your Honor, because it would indicate that the transaction was

had between the witness and the Tenants Protective Association and not between the witness and Lennon and Hampton, as Lennon and Hampton were simply there as (358) employees or volunteers, or what have you. This is not binding on our defendant, as there has been no connection shown.

The Court: Let me see it.

Mr. Feldman: Yes, sir (handing to the Court). Your Honor, I will withdraw the objection.

The Court: You withdraw it?

Mr. Feldman: Yes, sir.

The Court: I was just going to sustain your objection and not receive it in evidence as an exhibit. I was going to sustain it subject to further connection.

Mr. Feldman: I withdraw the objection.

The Court: All right. Then it is received.

(Government's Exhibit 12 for identification received in evidence.)

Q. Did you subsequently make any other payments to Mr. Lennon for commissions sold on these apartments? A. Yes.

Q. And when was that, sir?

Mr. Feldman: Objected to, if your Honor pleases, as not within the indictment or in the bill of particulars.

The Court: What is your answer, Mr. Bolan? (359) Is it outside the indictment?

Mr. Bolan: Your Honor, it is part of the same transaction.

Mr. Feldman: No, your Honor, these means of using——

The Court: Wait a minute. Mr. Bolan is answering my question.

Mr. Bolan: There has been a question raised as to whether the money was earned by the Tenants Protective Association and the defendant Lennon.

The Court: Yes.

Q. This $3,000 payment is just one of the payments made on the original agreement, is that correct, Mr. Kent? A. Yes.

Mr. Bolan: I wish to find out about the balance, your Honor.

The Court: Whom did you make the other payment to under that arrangement?

Mr. Feldman: If your Honor pleases, I submit that this is completely prejudicial. The Government comes in here with an indictment which accuses us of receiving not $3,000 but $1500, which is apparently the $1500, one-half of the bifurcated check, and now (360) they come in with a suggestion of other transactions which are not in the bill of particulars.

Mr. Bolan: There is no charge that the other transaction is unreported income, your Honor. I request the answer merely to show the entire transaction.

The Court: For that limited purpose, I will allow it.

Mr. Feldman: I respectfully except, your Honor, because it does not state the case. They are going

all over the lot on the theory that it shows a related transaction.

The Court: Well, it has got to be closely related. All right. What is the answer to the question?

The Witness: I have lost the question.

Mr. Bolan: All right, I will withdraw the question.

Q. When you paid this $3,000 or turned over this $3,000 check to Mr. Lennon, that represented commissions on how many apartments? A. 200 apartments.

The Court: Did you actually deliver that check physically to Mr. Lennon?

(361)

The Witness: Yes.

The Court: All right.

Q. And incidentally do you know whether or not Mr. Lennon had any position with the Tenants Protective Association? A. I don't know.

Q. Now, you say that Lennon and Hampton sold 225 apartments; is that right, sir? A. Yes, sir.

Q. And did you subsequently pay Mr. Lennon what was due on the other 25 apartments? A. Yes, and some subsequent date, I don't recall when it was, we sat down and figured out the total number of apartments they sold, and I think it was agreed that 25 more apartments, which was the total number of apartments sold and for which I paid Mr. Lennon, let me see, either 395 or $400 in cash. 25 apartments would have been $375, and the twenty or twenty-five dollars was for—I think it was postage that they expended. That is my best recollection.

Mr. Bolan: Will you please mark this for identification?

(Marked Government's Exhibit 13 for identifi-
(362) cation.)

Q. I show your Government's Exhibit 13 for identification and ask you if this refreshes your recollection as to when you paid Lennon that amount? A. Yes, this is——

Q. You don't have to say what it is. Does it refresh your recollection? A. Oh, yes, April 16, 1954.

Q. That is when you paid Lennon this cash sum of approximately $400, representing the balance due on commissions earned for the sale of Dorie Miller apartments? A. Yes, sir.

Mr. Bolan: I have no further questions at this point.

Cross examination by Mr. Feldman:

Q. Mr. Kent, you were just shown a piece of paper and asked whether or not that refreshes your recollection as to the payment that you made to Mr. Lennon, is that right? A. Yes.

Q. Now, during the course of your testimony you used the expression Lenonn and Hampton, or Hampton and Lennon sold.

(363)

Now, I will ask you this: When you used the expression "sold," were you referring to them as the men who did the work? A. Yes.

Q. Now, there came a time, did there not, Mr. Kent, when you were interviewed by the Treasury Department

concerning this transaction with Messrs. Lennon and Hampton? A. Yes.

Q. That was at least some time before your appearing here, is that right? A. Yes.

Q. Now, at that time did you give a statement to the Treasury Department concerning the nature of your transaction with Messrs. Lennon and Hampton? A. Yes.

Mr. Feldman: Now, do you have that statement here, Mr. Bolan?

Mr. Bolan: I certainly do (handing to Mr. Feldman).

Mr. Feldman: Thank you.

Q. Now, I show you Government's Exhibit 13 for identification and ask you whether or not that refreshes your recollection as to whether your dealings (364) were with Mr. Lennon and Mr. Hampton, or with the Tenants Protective Association? A. The statement I made to the Internal Revenue and the fact is that I dealt with the Tenants Protective Association.

Q. So that actually——

Mr. Feldman: I will withdraw that question.

Q. Mr Kent, did you appear before the grand jury? A. I did.

Q. And in appearing before the grand jury, if you recall, was your testimony before the grand jury substantially similar to that which appears in this statement which you have before you, Government's Exhibit 13 for identification? A. As best I can recall now, it was similar to that.

(365)

Q. Now, so far as you were concerned, Mr. Kent, you were taking work away from the Tenants Protective Association, is that right? A. Yes.

Q. And was it Congressman Powell who suggested to you that the Tenants Protective Association do the work? A. He did not.

Q. Who suggested it to you? A. Lennon and Hampton.

Q. And, if you know, sir, what is the nature of the Tenants Protective Association? A. I don't know too much about it.

Q. To the extent that you do know, can you tell us? A. It is a group that as far as I know that the purpose of which is to help those who cannot get housing, get housing, and from its name itself, to help tenants against eviction, get new housing, and so forth, along that line.

Q. So far as you know, is that a church activity? A. I don't know.

Q. It operated out of the church, though, didn't it, out of the Abysinnian Baptist Church? (366) A. I don't know the organization of the church. To me it wouldn't seem to be a church activity.

Q. You mean the religious activity? A. I mean the religious—I didn't know it to be a church activity, although I had been at the church several times.

Q. Did you know that Mr. Lennon and Mr. Hampton were employed by the church? A. Yes.

Q. Did you know that Mr. Lennon and Mr. Hampton were also employed by Congressman Powell? A. Yes.

Q. At any time when you paid that $3,000 check, Mr. Kent, were you under any idea that you were paying Lennon and Hampton personally? A. No.

Q. At all times, Mr. Kent, when you paid, were you under the impression that you were paying to the Tenants Protective Association or somebody else? A. I was under the impression that I engaged the Tenants Protective Association.

Q. To do the job? A. To do the job.

(367)

The Court: Do you know who the Tenants Protective Association was, who it consisted of? Did you know that?

The Witness: I didn't know the officers, I didn't know specifically, your Honor, who the people were. I knew that Lennon and Hampton represented the Tenants Protective Association.

Q. But were you under any illusion, Mr. Kent, that you were paying the Tenants Protective Association as a blind for Lennon and Hampton? A. That did not enter my mind.

(371) • • •

Re-direct examination by Mr. Bolan:

Q. Mr. Kent, you in answer to Mr. Feldman's question stated that you gave a statement to the Internal Revenue Service and later appeared before the grand jury; is that correct? A. Yes.

Q. And in those two appearances you mentioned the Tenants Protective Association, is that right? A. I saw the reference to the statement I gave to the Internal Revenue. My recollection is that the same statement was made to the grand jury.

Q. Now prior to those two occasions you were before two other Government departments, were you not, or bodies? To refresh your recollection, you were interviewed by agents of the FBI in 1954, were you not? A. Yes.

Mr. Feldman: Your Honor, am I to understand that the Government is now attempting to impeach its own witness?

The Court: I haven't heard it was. (372) Go ahead.

Mr. Bolan: I may point out, your Honor, that Mr. Feldman——

The Court: Go ahead. I have overruled the objection. Go ahead.

Q. And later in 1954 you also appeared before a Senatorial Committee. Is that correct? A. Yes.

Q. You were questioned by the FBI as to the commissions paid by you on the sale of the Dorie Miller apartments, were you not? A. I was questioned at great length—I don't recall specifically whether that was one of the questions. It might have been. But as you just stated, I have no recollection as to any specific discussion.

Q. And the Senate? Were you questioned by the Senate Committee as to commissions paid by you to Mr. Lennon and Mr. Hampton? A. Well, do you have—oh, yes. There I was questioned specifically, I recall that.

Q. Did you tell the Senate—were you questioned under oath, sir? A. Yes.

(373)

Q. And did you tell the Senate Committee that you paid commissions to Lennon and Hampton? A. All I

could have told him was exactly what I told here, which is the facts. I mean I did, of course I paid him commissions, Lennon.

Q. Did you mention the Tenants Protective Association at all to the Senate Committee or the FBI? A. I wasn't asked.

Mr. Feldman: Your Honor, I object. This is obviously an attempt at impeachment.

The Court: I don't see that there is any attempt to impeach at all. I overrule the objection. He said he wasn't ask that question by the Senate or the FBI.

Q. You say that you had a conversation with Congressman Powell in which you told him that you wanted to employ Lennon and Hampton to sell the apartments, is that correct? A. Yes.

Q. Did you ask the Congressman for the suggestion as to who you should employ as sales agent? A. I did not.

(374)

Q. Did you tell agents of the FBI on July 8, 1954——

Mr. Feldman: Your Honor, I object to this. The minutes are——

The Court: Let the question be finished. I can't rule on a question until I have heard the question.

What is the question?

Mr. Feldman: Yes, but——

Q. Did you tell——

Mr. Feldman: —if the content is improper I have a right to object. With Mr. Bolan standing here leaning on the jury box and looking at a

photostatic copy, obviously reading from something and saying, "Did you tell," I think it is highly improper.

The Court: I will let Mr. Bolan finish the question.

What is the question?

Q. Did you tell agents of the FBI on July 8, 1954 that the appointment of Lennon and Hampton came about after you had asked the Congressman for his suggestion as to a sales agent and that Mr. Powell suggested these men? (375) A. I don't know that I said that.

Q. You won't deny that you said that?

Mr. Feldman: Objected to, if your Honor please.

The Court: Overruled. He said he doesn't know.

A. I don't know that I said it. I couldn't say that I did or didn't.

• • • •

(382) • • •

Q. The question is, did Lennon and Hampton sell the apartments for you or did Tenants Protective Association? A. Tenants Protective Association, Mr. Bolan, is something in theory. I don't know what Tenants Protective Association is. It is a corporation.

The Court: Is it a corporation?

Mr. Bolan: Yes, it is, your Honor.

A. Yes. These people said they represented Tenants

Protective. They were the ones with whom I dealt. I couldn't physically deal with Tenants Protective.

Q. The question that has been asked you several times, did you consider yourself as dealing——

The Court: What he considered—I think he has thoroughly explained who he was dealing with. I think the jury understands the situation.

Mr. Bolan: The Government has no further questions, your Honor.

The Court: Have you any further questions?

Mr. Feldman: No further questions.

(383)

The Court: All right, you are excused.

We will have a five minute recess, at this time.

(Witness excused.)

(Short recess.)

The Court: Next witness.

Mr. Bolan: The Government calls as its next witness, Mr. Paul L. Klein.

PAUL KLEIN, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Bolan:

Q. Where do you reside, Mr. Klein? A. 473 Franklin Roosevelt Drive, in Manhattan.

Q. Do you know a man named Acy Lennon? A. Yes, sir.

Q. Do you see him here in court? A. Yes, sir.

Q. Would you identify him, please? A. He is the man on my extreme right of the large table there.

Mr. Bolan: May the record show that the witness has identified the defendant.

(384)

The Court: Yes.

Q. Is Mr. Lennon a good friend of yours? A. I would say so, yes, sir.

Q. And is also Congressman Powell? A. Yes, sir.

Q. Now did there come a time in the year 1952 when you approached Congressman Powell for a loan of $3,000? A. I am not sure, sir. I have no personal recollection of that, but I have been told that it did happen, and I have no reason not to believe it. I just don't recall it.

Q. Did there come a time in connection with that loan that at Congressman Powell's request you went to see the defendant Lennon to obtain this $3,000 from him? A. I have no recollection of that, sir.

Q. Have you been told it happened? A. Excuse me?

Q. Have you been told that that did happen? A. Yes, sir.

Mr. Feldman: Your Honor, may I object as to what the witness was told as pure hearsay?

The Court: What you mean to say is that (385) if you borrowed three thousand you would forget it?

The Witness: I don't think so, sir. But I don't recall it too——

Q. Well, now, Mr. Klein, did you submit a signed statement under oath to the Internal Revenue Service on May 9, 1955? A. I can't answer for the date, but I did make a statement, yes, sir.

Q. And did you also appear before the grand jury on September 15, 1955 and give testimony under oath? A. Again without being sure of the date, I did make an appearance before a grand jury, yes, sir.

Q. And you were asked the questions about this loan that I have just asked you before the grand jury, were you not? A. I recall so, yes, sir.

Q. And your answers were different than those you have just given, is that correct? A. Yes, sir.

Mr. Bolan: Your Honor, I request permission to examine this witness as a hostile witness.

Mr. Feldman: Your Honor, I don't see any hostility at all. All we have here is a witness (386) who apparently is wishing to recant, that is all.

The Court: I haven't see any question of wishing to recant. The witness seems to have a lapse of memory, from all I can see.

Show him the statement and see if that refreshes his recollection.

(Government's Exhibit 14 marked for identification.)

Q. I show you Government's Exhibit 14 for identification and ask you if this refreshes your recollection as to the signed sworn statement you gave to the Internal Revenue Service? A. Yes, sir.

Q. I call your attention to a second sheet there, too, Mr. Klein. A. Oh, I am sorry.

Q. And ask if that was submitted by you on the same day that you signed the other statement? A. Yes, sir.

Q. Now when you signed those sworn statements did you sign them knowing the statements therein to be true? A. I believed them to be true, yes, sir.

Q. And has something happened since you signed (387) those which caused you believe they are not true? A. I can't answer that yes or no. Which caused me to realize, things happened which caused me to realize that I do not know them, that I do not have any present recollection of the facts.

Q. Let me ask you this:

In these signed statements to the Internal Revenue Service you stated that certain things took place; is that right, sir? A. Yes, sir, in that statement, yes.

Q. And now I ask you did the things that you said took place in that signed statement actually take place? A. I don't recall them as having taken place.

The Court: Did you recall them as having taken place at the time you signed the statement?

The Witness: Yes, sir.

The Court: At that time you had a recollection of them?

The Witness: Yes, sir.

The Court: Now what is the date of the statement?

Mr. Bolan: May 9, 1955.

The Court: That is just a little over a (388) year ago.

The Witness: Yes, sir.

The Court: And at that time you recalled those things as having taken place?

The Witness: Yes, sir.

The Court: What you said was true in that statement, it was your recollection at that time?

The Witness: Yes, sir.

The Court: Have you suffered any illness in the past year?

The Witness: No, sir. I have—suffered isn't the word—I have gone through long contemplation about the state of my memory at that time, concluded as I told Mr. Bolan, told him that I just didn't think I could stand behind that statement, that I don't know it to be true. I have no reason to not believe it, except that it sounds silly for me to forget it, but I can't imagine that I would have forgotten it.

The Court: If it was true a little over a year ago you say now that something has happened which makes you realize that it was not true or that you just now forget?

The Witness: Can I try to answer that in (389) my own words?

The Court: Yes.

The Witness: I have no recollection of the events having transpired as I thought I recalled them. On the other hand, since a friend and friends of mine told me that that was what happened, then it was—I had a period when I was in a very perplexed and unhappy state of mind, I accepted their recollection as my own and honestly thought it had happened. But there were too many gaps in my own memory to satisfy me, and when I continued to think about it I just find myself impossible of saying that I recall it.

Mr. Bolan: Just to fill out the picture, your Honor. This statement was given in May 1955.

By Mr. Bolan:

Q. You appeared before the grand jury in September 1955, is that correct? A. Probably the date.

Q. And you testified along the exact same lines as given in that sworn statement, is that correct? A. Yes, sir.

(390)

Q. And then thereafter your friend, Mr. Lennon, was indicted, is that correct? A. I don't know the date of his indictment, not actually or relatively.

Q. Well, he was indicted the first time in October 1955. And now some time after Mr. Lennon was indicted you came to the conclusion that you had no recollection as to these things you had testified to and had given sworn statements about; is that right? A. Yes, sir.

Q. Now you mentioned that you talked to some friends of yours who told you that these things happened. Who were those friends? A. Mr. Lennon and Mr. Hampton.

Q. What did Mr. Lennon tell you and when? A. Subject to not having an exact quotation of course, but can I try to give you the picture of what happened?

Q. Yes. A. Some time in the, I think the early Summer, probably, of 1955, I received a call from a man whose name begins with "B" in the Internal Revenue.

(391)

Q. Mr. Bulson, is that correct? A. Bulson that is. And he asked me to come down. I can't remember exactly what he said.

He said he wanted to talk to me, something about a loan from Mr. Lennon or Congressman Powell to me.

I said I would be glad to speak to him. I didn't remember anything about any such loan.

(392)

And I called up Mr. Lennon and said, "Mr. Bulson wants to see me. Something about a loan." He said, "Sure, let's talk about it."

I went up, I think to the church, I wouldn't swear to that; I met Mr. Lennon and Mr. Hampton some place, and said, "Now, what is this all about?"

They said, "Well, don't you remember in 1952 when you were pretty broke"—and that was certainly true, and something I remembered sadly—"you were hard up for dough, and you asked the Congressman if he could loan you some."

That didn't surprise me. I didn't remember it particularly, but it wouldn't have surprised me if I had.

And to go on with what they told me, roughly, he said, "There might be some money available in one of the community service funds" of his organization.

Q. Congressman Powell said this? A. Yes. So, in a sort of indirect quotation, continuing: "You came here to us." I don't know which one of them said "to us," either Mr. Hampton or Mr. Lennon. "And we gave you a check for three thousand just about the time he went to Chicago for the convention of that year."

(393)

So I remember nothing about it. But it sounded plausible in every respect, except that I did not remember it, and I thought I would certainly remember a loan of that sum, especially when I was broke.

I said, "What did I do? Did I sign an IOU or something?"

They said yes.

I would like to put into the context that these were two pretty good friends of mine recalling to mind an episode and my conclusion seemed to be a clear recollection on their part. I had every disposition to believe it.

I was troubled by the fact that I couldn't remember it.

But as I thought about it and listened to them and thought about it in the time before I saw Mr. Bulson, I thought that I myself remembered it. If I could sort of coin a phrase, I promoted, in quotes, a recollection of someone else into my own memory, and so I believed it.

I didn't give much more thought about it. As a matter of fact, I knew so little about the whole thing, I thought the question was whether I had borrowed three thousand and hadn't paid it back, which (394) might have made it income, and I offered to Mr. Bulson to pay retroactive tax on it. He said that was not the issue.

Q. This was in May, 1955? A. Sometime in the early part or early spring.

Q. Yes. A. Yes.

Q. Four months later you appeared before the grand jury and your state of mind was in the same condition as it was when you gave Mr. Bulson the signed statement? A. Yes. I might say I think it was largely again —I think you interrogated me.

Q. That is right. A. It was largely that. I confess to——

Q. Did you say in the grand jury a lot of things that Mr. Lennon and Mr. Hampton didn't tell you? A. Didn't tell me?

Q. Yes. A. I don't recall any. It's possible.

Q. Didn't you testify in the grand jury that you went to Congressman Powell and asked him for a $3,000 loan? A. I don't recall; but that would have been in (395) the general nature of what I thought were the facts. I am sure he didn't just volunteer it.

Q. Didn't you testify that Congressman Powell told you to get the money from Lennon and Hampton? A. I think so, yes, sir.

Q. Didn't you in the grand jury testify that you needed money badly at the time? A. Yes, sir.

Q. Didn't you at great length as to why you wanted the money and to whom you paid it after you got it? A. I believe so, yes, sir.

Q. Did Mr. Lennon tell you that those were the people you pay the money to? A. No, sir, not that I recall.

Q. Where did it come from? All the people you told us in the grand jury that you paid the money to?

Mr. Feldman: Your Honor, I submit at this point that there is an obvious attempt at impeachment of the witness that the Government has——

The Court: No. He still is trying to revive what seems a sort of strange lapse of memory of a man.

(396)

Mr. Feldman: I wish to point out to the Court that my concern here is with the defendant as much——

The Court: I know it. Here is a man who apparently does now—you have no recollection, of these things at all concerning which you testified?

The Witness: Sir, if I might say, not a lapse of memory but actually a correction, if I am correct in saying that it is a correction, of an erroneous memory of fairly recent date. I would describe it as reverting to what my actual facts at my disposal are, namely, that I do not recall any such episode or loan in 1952. That I, because of the disposition to accept what friends told me and a disposition I still would have of accepting as my own memory their memory, and then realizing that I

couldn't make that stand up in my own mind, that it wasn't my own thinking, and I had to face that fact.

Mr. Feldman: Your Honor, I point out that there is a very highly prejudicial situation coming here now. If this is the place where Mr. Klein has come to relieve his soul, I sympathize with him, but I point out that I represent a defendant, and a highly prejudicial atmosphere is being created.

(397)

The Court: If a man has made sworn statements before the grand jury and now comes in and says to the United States Attorney, "I go back on those statements, those aren't true statements," I think then certainly, and I would assume, the United States Attorney's office is somewhat taken by surprise, and in that he has a right to examine the man.

Mr. Feldman: I think the Court could appropriately inquire and I think the Court should whether or not before the United States Attorney put this witness on the stand the United States Attorney knew that the witness was going to so testify.

The Court: That doesn't make any difference. If this man swore to something before the grand jury and now comes in and says that was not true and that is part of the evidence that the grand jury heard, and the man wants to recant that testimony, that man is then an apparently hostile witness.

Mr. Feldman: The difficulty I have is that I don't know with what situation I am dealing.

The Court: Neither do I. I don't know what it is he testified to here, what he wants to testify to now. I think we had better find out.

Colloquy of Counsel

Mr. Feldman: One of the issues in any trial (398) is the stability of a witness. And I point out to the Court that if this witness doesn't meet that test and my client is prejudiced thereby, we have been seriously hurt.

The Court: Of course the credibility of a witness is for the jury to decide, taking into account all of the evidence in the case. I don't quite understand what it is the witness now wants to testify to or what he testified to before.

If he says he swore falsely before the grand jury, why, certainly the United States Attorney has a right to find out what the truth of the matter is. He has a right to cross examine him as a hostile witness.

Mr. Feldman: Yes, but the truth of the matter, as it affects us, and that is the point, is the United States Attorney in a position to now state before the Court that this witness will, when questioned, offer testimony hostile to the defendant?

The Court: I don't know.

Mr. Feldman: Neither do I.

The Court: Let's ask the question and find out. I am going——

Mr. Feldman: We have a jury sitting here.

(399)

The Court: That is all right. I am going to allow the question to be asked so that we can find out what the truth is in this matter.

Mr. Feldman: I most respectfully except.

The Court: All right.

Paul Klein—for Government—By the Court

By the Court:

Q. What is your business, Mr. Klein? A. I am working for the City as a staff member of the Committee on Intergroup Relations.

Q. Is that a governmental job? A. Yes, sir.

Q. What was your job before that? A. Which period, sir?

Q. Immediately before this job what job did you have? A. I was doing similar work for a private agency in New York, in their Cleveland field office, the Jewish Labor Committee.

Q. What was your job before that? A. Well, I was doing independent consulting work in the same field, but earlier in 1952 I worked with the predecessor of the present City Commission, which was a semi-official body called the Mayor's Committee on Unity.

(400)

Q. What is your educational background? A. I attended Cornell University for an undergraduate degree, Columbia for a law degree in administrative law.

Q. Did you get a law degree in Columbia? A. Yes, sir.

Q. What year? A. '48.

Q. Have you practiced law? A. No, sir.

Q. Are you admitted to the bar? A. No, sir.

Q. You knew what it was when you were appearing before the grand jury, though? A. Yes.

Q. When you were being questioned by the Bureau of Internal Revenue, you knew that? A. Yes, sir.

Mr. Feldman: May I address the Court at the bench for a moment?

The Court: Do you have any objection?

Paul Klein—for Government—Direct

Mr. Feldman: I would just like to discuss the question with the Court, if I may, before I burden the record.

(201)

(Conference at the bench between the Court and counsel, off the record.)

By Mr. Bolan:

Q. Mr. Kent, do you recall borrowing or asking Congressman Powell for a loan of $3,000 in 1952? A. I guess you mean me. Klein.

Q. Mr. Klein. I am sorry. A. No, I do not, sir.

By the Court:

Q. Did you borrow $3,000 from— A. Not to the best of my recollection.

Q. Did you borrow any $3,000 from anybody in that year? A. Not to the best of my recollection, sir.

Q. Were you broke in that year? A. Yes, sir.

Q. Did you go to Chicago in that year? A. Yes, sir.

Q. You said you went to the convention. A. Yes, sir.

Q. What convention? A. Democratic National Convention.

Q. Where did you get the money from? A. I was on the staff of then Candidate Harriman (402) and just signed bills. I had no expenses other than——

Q. But you didn't borrow any money from anybody? A. Small sums from friends, yes, sir.

The Court: Go ahead.

By Mr. Bolan:

Q. Did you get a check of $3,000 from the Tenants Protective Association from Mr. Lennon? A. Not to my recollection.

Q. Did Mr. Lennon tell you in recent months that he gave you such a check? A. By recent months you mean——

Q. At any time did he tell you? A. Yes, sir. I am not sure either Mr. Lennon or Mr. Hampton.

Q. Told you that they gave you a check for $3,000 from Tenants——

Mr. Feldman: I think at this juncture, whether it be Lennon or Hampton, is a vital issue.

The Court: It might be important, yes. Go ahead.

Q. Did you appear in my office, Mr. Klein, a few months ago? Did you? A. Yes, sir.

Q. Was anyone else present when you talked to me? (403) A. Yes. I think, either a Mr. Emanuel or Manuel, identified to me as being with the Revenue Department, Revenue Service.

Q. Did you tell us then that Mr. Lennon had told you about this transaction? A. I don't know if I said Mr. Lennon or Mr. Hampton. But if I said one or the other, I should have said the situation in which both were present.

Q. Mr. Lennon in any event, whether he said it or not, was present when Mr. Hampton said this, is that right? A. Yes, sir.

Q. Now, getting back to the question I asked you before, you say that when you testified before the grand

jury and gave these sworn statements to the Internal Revenue Service, the statements there were not based on your own recollection but were based on the recollection of Lennon and Hampton, is that correct? A. Yes, sir. I thought they were mine, but they were not.

Q. Now, I ask you whether you recall testifying in the grand jury that you used part of the $3,000 you got from Powell through the Tenants Protective Association to pay various people that you owed money to? (404) A. Yes, sir. Something——

Q. Did Mr. Lennon tell you that that is what you did with the money? A. I don't think so, sir, no. I think it came from my trying to account for this money that I couldn't remember and just saying what in the world I could have done with it, because these two friends had told me this had transpired and I felt I was just being a darn fool by not remembering it.

The Court: Did you think you were helping them out by telling that story?

The Witness: I didn't have any opinion about that, sir. I accepted their story as related to me.

The Court: Did you tell the grand jury that you were merely giving somebody else's story to them?

The Witness: No, sir, I believed at the time that I knew it. And it was questions essentially raised—the questions raised by Mr. Bolan at the grand jury that made me realize I just couldn't say that I knew this. It was too silly to me to think that with all these questions I couldn't answer essentially, that I was trying to guess at, but I just plain didn't know this to be the fact, and if I was wrong in maintaining it, if I did maintain it,

which (405) is why I asked Mr. Bolan, to see him, and tell him that my recollection wasn't as previously stated.

Q. After Mr. Lennon was indicted you came to my office, is that correct? A. I don't know, sir.

Q. If I tell you Mr. Lennon was indicted in October, 1955, would you be able to state whether it was after his indictment that you came into my office? A. Only if you tell me the date that I came to you, and I don't just— —

Q. You came to me a few months ago, didn't you? A. Yes, but I didn't know it. I am willing to grant it. I have no quarrel with it. I just don't know how—sort of trying to avoid the previous foolishness that I had done of saying yes to something which I didn't——

Q. As a matter of fact, after you saw me, you wrote me a letter, too, didn't you? A. Yes, sir.

Q. This was in April of this year? A. Probably.

Q. Do you recall having any dealings at all with the Tenants Protective Association? A. Any dealings with them?

(406)

Q. Financial dealing. A. No, sir.

Q. I show you Government's Exhibit 15 for identification, and ask you if this refreshes your recollection in any way, without specifying what that is? A. May I turn it over?

Q. Yes. A. No, it does not, sir.

Q. I show you Government's Exhibit 14 for identification, and ask you if that is your signature on the first page and on the second page? A. Yes. I recall signing it.

Mr. Bolan: Your Honor, I offer this in evidence at this time.

The Court: Any objection?

Mr. Feldman: No objection, your Honor.

The Court: All right. Received in evidence.

Mr. Bolan: I would like permission to read this to the jury.

The Court: It is not marked yet.

(Government's Exhibit 14 for identification received in evidence.)

(Mr. Bolan reads Government's Exhibit 14 to 407) the jury.)

Q. Now, Mr. Klein, did you live with Congressman Powell for two months in Westhampton in 1952? A. Yes, sir.

Q. Did you assist him in the campaign? A. Yes, sir.

Q. You are very close— A. I hope it was assistance. I participated anyway.

Q. You are very close personal friends? A. Yes, sir.

Q. Do you have any recollection of a note being given for any amount of $3,000? A. No, sir.

Q. Well, now, after Mr. Lennon was indicted and after you suddenly realized, or realized, I should say, that what you had testified to in giving the sworn statements about actually was not within your own recollection, did you go and have a conversation with Mr. Lennon about this? A. I don't know if I saw him personally or called him. Roughly what I remember is that about the same time he asked me to see his attorney anyway. I can't account for a chronology of the days.

(408)

Q. Before you came to me, you told Mr. Lennon's attorney about this lack of recollection, is that right? A. Yes.

Q. Nor, Mr. Klein, do you remember these questions being asked you and your giving these answers in the grand jury hearing:

"Q. Did you borrow the sum of $3,000 in 1952? A. Yes, sir.

"Q. Will you tell us from whom you borrowed that money and the circumstances surrounding the loan? A. Well, I was in financial difficulties, having been unemployed for some time, and I asked a friend of mine, Congressman Powell, if he could help me out temporarily, and he said he did not have the funds, himself, but that perhaps one of his organizations would. I'll explain that if you want. He has several community organizations of which he's chairman or the guiding force.

"Q. Would you briefly explain that, sir? A. Well, as I'm the sure the jury knows, the Congressman is also a minister, and I guess in both capacities—it's fairly hard to draw the line—engaged in a number of community functions to improve the com- (409) munity and give aid to constituents and other people. Has several groups. One is the People's Committee of which, I believe, is chairman. I don't know there are any written detailed functions of that organization, but it's generally set up to help the community in whatever way it could. Then there's the Tenants Protective Association, I think is the exact name—I just call it the Tenants Group in referring to it—which essentially, I guess, was set up to help people get apartments, I think, to help them in case of rent violations,

generally to help people of the community in their real estate problems. Then there have been a couple of occasional committees set up for one purpose of another. I think we had one on fair employment in the radio industry.

(410)

"Q. Are you active in these various committees? A. Well yes. I'm not sure at any give tie—it wasn't spilled out who I was active with at a given day. My dealings were largely with—directly with—Congressman Powell and with a few of his staff people, and if there was a meeting, I frequently wouldn't know exactly which hat we were wearing at the meeting.

"Q. Have you ever acted as his secretary? A. No."

Mr. Feldman: Your Honor, at this point may I interrupt and ask how all of this is binding on the defendant?

The Court: Well, the question is whether this refreshes this witness' recollection and also whether it is true. He now apparently says that he swore to something in the grand jury that he had no recollection of. I think he can continue reading the questions.

Q. "Q. When you asked Congressman Powell for the $3,000 loan, did you ask him specifically for $3,000 or did you ask him for some other amount? A. I don't really remember. I think— and this is really just a guess based on my recol- (411) lection of the situation—that I tried to figure out about what I'd need to get myself straight with some friend who had been supporting me.

"I tried to figure out about what I'd need to get myself straight with some friends who had been supporting me"——

Mr. Bolan: Well, that has been repeated by mistake twice, and then the answer continues: "and a little bit more to keep going until I could get a job.

"Q. And what happened? Did he give you the names of some people to see or some organization? A. Yeah; I think, in general, I think it was just a question of See Mr. Lennon or Mr. Hampton.

"Q. Did you know Mr. Lennon or Mr. Hampton? A. Yes, I had seen them very frequently at these community meetings and frequently had sat with them to plan things on the Congressman's behalf, so I did see them and I assume—I want to make it clear, it's just a guess—that he also spoke to them and said, 'It's OK, if you have the money in the treasury,' to lend it to Klein.

"Q. Did you ask him for a specific amount? A. I think at that time in discussion we may (412) have boiled it down——"

Mr. Feldman: Again, your Honor, I renew my objection. The issue here is whether or not my client received $1,500 and did not report it as income.

The Court: That is the issue, and the issue admittedly further is whether this money which went into the Tenants Protective Association became his money.

Now, if this has some bearing upon it why it is relevant.

Mr. Feldman: I respectfully except because there is no such relevancy at all, your Honor.

The Court: Well, the reading isn't over yet. How do we know?

Mr. Feldman: Well, we have to deal with it as it comes up, and determine what relevancy is there here.

The Court: There is sufficient relevancy to allow this reading to refresh this witness's recollection which seems strangely deficient.

Mr. Feldman: Strangely deficient or not, the witness has testified that he has no recollection.

(413)

The Court: I know. Well, if he had a recollection a few months ago and he now says he has no recollection, certainly the testimony that he gave before the grand jury may be read into the record to see if it refreshes his recollection.

Mr. Feldman: I respectfully except and point out to the Court——

The Court: All right.

Mr. Feldman:—that his testimony before the grand jury is now being read by Mr. Bolan, and such reading does not involve my client nor does the testimony in this court involve my client.

The Court: We will see. Go ahead.

Mr. Feldman: Exception.

Q. "Q. Did you ask him for a specific amount? A. I think at that time in discussion we may have boiled it down——

"Q. In discussion with Congressman Powell? A. Yes, about what I'd need, but to be frank, it may not have been exactly that. I may have decided what I needed, or wanted a little more, and that may be all they figured they could do, $3,000.

"Q. Will you tell us exactly what you said to (414) them

as far as you can recall, and what they said to you? A. Well, only in course of the nature of what we discussed, I don't remember the detailed conversation. I didn't really unfortunately have to tell them my sad financial plight. It was pretty evident and they knew it; in fact, from time to time, offered me suggestions or at least sympathy when I was job hunting.

"Q. Did you see the two of them together? A. I would say probably most of the time I did. I am sure I have also seen them separately. I guess essentially what I said was I approached the Congressman for a loan and thought if you guys have it available in one of the funds he could lend it to me. Whether they had been briefed by him beforehand and knew what they had or whether they then looked up in the checkbooks, I couldn't swear, but in any case, they did say $3,000 was available and they would lend it to me.

"Q. Available from what source? A. Well, I didn't recall this in my recent conversation with Mr. Wilson"——

Mr. Bolan: It should be Mr. Bulson.

(415)

A. But I'm fairly sure it was the Tenants' Protective Group.

"Q. Tenants' Protective Association? A. Yes?

"Q. And did they draw a check to you? A. Yes.

"Q. And did they draw a check to you? A. Yes, I believe they gave me a certified check. Now may I explain my vagueness on that for a moment?

"Q. Certainly. A. This was towards the end of July or the very beginning of August of '52. I had been spending some time with Congressman Powell in his Long Island home where he suffered a ——

"Q. Where is that? A. West Hampton Beach, and he had suffered, well, I guess, a heart attack simply. I don't know the medical terminology. It turned out to be a scare of a heart attack really.

"Q. You lived there with him? A. Yes; I didn't move in exactly, spent three or four days at a time, and another three or four days at a time, over a period of couple of months, (416) I guess. I would run into the city to chase down a lead for a job and would slink back to West Hampton kind of disappointed. In any case, he got laid up and his doctor said he couldn't move around and had to stay completely still as possible to recuperate.

"Q. Do you recall requesting the loan of Congressman Powell at West Hampton? A. No, but I would be pretty sure it was me if it came after the heart attack, particularly; I don't think he left West Hampton. He wasn't preaching at the time, I don't think. In any case, because he was laid up and because I was unfortunately free at the time, I handled a number of affairs for him and I would go into the city and deliver papers for him or get papers and cash checks for him and probably maybe I think once or twice, at banks near his church but more frequently at the two banks where I had accounts in Manhattan already and this is why I am vague. I don't have the exact date of the loan; everything was pretty hectic, the Congressman was supposed to go to Chicago for the Democratic National Convention a week or so ahead of time and because of the medical situation I went in (417) his place, and as you might imagine, I was in a mad rush and I did take some papers, and I think some checks I either took or they were sent to me to hold for him and he cashed for him in Chicago. So the two banks which I did cash some checks out in Chicago, I guess it's called the Stock Yard Bank. In any case it's out at the stock yards where

the convention was held, and there was a bank in the Palmer House where we were living; or possibly—I don't think a check of this size—I might have cashed where our offices were at the Conrad Hilton, but I doubt I would have the nerve to go up to a hotel clerk and ask for $3,000.

"Q. You are not sure it was certified? A. My recollection is it was certified which strengthens my belief that I might have cashed it in Chicago even as a stranger. Excuse me, may I smoke here? I didn't know whether it was proper or not. May I smoke?

"Foreman: Yes, sir.

"Witness: Thank you.

"Q. Did you cash the check? Are you sure you cashed it? A. I am sure I did because I was able to pay back a number of friends"——

(418)

Mr. Feldman: Your Honor, may we not have this dramatic type of reading?

The Court: All right, and let us not have this dramatic type of interruption then.

All right, go ahead.

Mr. Bolan: (Continuing:)

"A. I am sure I did because I was able to pay back a number of friends who had been kind to me in the months previous, and since I had no income at the time I know I got it some place and that's the only place I could have gotten it. I say I am sure I cashed the check. The trouble in my mind is since there were other checks I was cashing at the time that were also associated with the Congress-

man, that I don't remember which check I cashed where. It would have been either the Corn Exchange Bank here on 72nd Street and Columbus Avenue, Central Savings Bank at 73rd Street and Broadway or one of the two Chicago banks.

"Q. What did you do with the $3,000? A. This is embarrassing, sir. I had been out of work for some time and a number of friends had, to put it quite baldly had supported me, and just general expenditures.

(419)

"Q. Did you pay them in cash? A. Yes, yes, I am sure.

"Q. Will you tell us who they were, and approximately how much you paid them? A. Yes, sir. One friend, I don't know the amount, but I am sure, was the major stockholder in my disabilities, and the gentleman's name Howard Gamser.

"Q. What is his address? A. 357 Bleecker Street in New York.

"Q. And how much did you pay him? A. Gee, I don't know. I toted up a good number of hundreds of dollars with him.

"Q. Approximately? A. It would really be a meaningless guess. I'd say in the nature of $500 or more.

"Q. Who else did you pay? This was in cash? A. Yes, sir. Well, there were small amounts in the general nature perhaps of 25 or 30 dollars to young ladies whom I had been keeping company with and who sometimes I would be stuck when a bill would come up.

"Q. How much would that total? A. I doubt if that would be another $100. (420) There was one gentleman whom I would very much ask not to have to name because of a very decent thing he did for me but which I understand may not be under State regulations quite proper and

that was a neighborhood tavern where I spent some time, I can say, for public relations' reason. I used it to make phone calls from and to escort people to and sometimes even when I was trying to be friendly with someone in a business sense and develop a business relationship with, and occasionally ate at this same place and the proprietor allowed me, well, technically, not to run up a tab but actually lent me money with which to pay tabs and his establishment. I'd say couple of times that got up over $100 and I would very much, very sincerely ask that I not have to name him.

"Q. Well, how much did you pay him? A. I—general recollection—probably paid him off about $100 right after cashing this money and then after paying some other money and allowing a little money for me to see ahead on probably paid him another 100 or so. These are again all guesses. He would keep, I am pretty sure he kept a record (421) either on paper or in his head about what I owed him.

"Q. What is his name, sir? A. I'm sorry, sir, I don't feel I can answer that.

"Q. You understand that the proceedings here are completely secret? A. I'm sorry, I don't feel I can answer that.

"Q. What is the reason for not answering it, sir? A. I'm—I understand that it' against the State Liquor Law in New York to credit customers. In fact, I think, technically, I think it's illegal for a man to buy a woman a drink in New York because the law reads each customer must pay for his or her own drink.

"Q. We'll defer request on that for the moment. A. Well, sir, I say this. I don't like this position but I would certainly on leaving here ask the person involved whether he would mind. I'm afraid he would mind.

"Q. Of course you know that is no valid excuse for not answering the question. A. I know but it's something I would have to (422) take the responsibility for rather than shifting it to anyone else, sir.

"Q. Did you pay anyone else any money? A. I don't remember for sure. I—from time to time—borrowed sums from my father and whenever possible paid him back and I would imagine that about that time I had some money I owed him and probably paid him something between 100 and 250 dollars, but I don't know for sure that that particular loan I made enabled me to pay him at that time.

"Juror: Were these events in approximately June of '52?

"Witness: No, sir. Some were between, I'd say, between July 15 and August 15. I date this by the Chicago episode.

"Juror: Where were you living at that time?

"Witness: 101 Central Park West in the home of my parents.

"Juror: Living with your parents there?

"Witness: Yes, sir.

"Juror: It was their apartment. You were not paying for the apartment?

"Witness: That's right.

(423)

"Q. Did you pay any sums at that time? A. I think not except some gasoline bills for my car which I had charge accounts for.

"Q. What did you do with the balance of the $3,000? A. Well, I did not get a steady job or for that matter any

job, I guess, until February of 1953 and I guess in the words of the old story, I squandered the rest.

"Q. Did you put it in a bank account? A. I don't remember for sure. I would imagine that I put some of it in more likely the checking account since it wasn't likely to stay very still in the savings account. That would be the Corn Exchange Bank. I think it's called the Hudson Branch at 72nd Street and Columbus. I don't know for sure, but I just imagine rather than keeping—I don't think in a number of years I have had that much cash in my hands for any length of time, so I am pretty sure I put it in a bank.

"Q. That would be over $2,000? A. I guess so, yes, sir.

"Q. Aren't you sure? A. No.

(424)

"Q. You don't recall having approximately $2,000 after paying off these debts? A. Well, I just assume I did. I don't remember the balance at a given date or what I had in my pocket.

"Q. Is it possible you cashed the check at West Hampton when you were with Congressman Powell? A. Possibly; only reason I say no is I have no recollection of having gone to that bank. In fact, a year or so ago when I was in that area I went to that bank and I think it was the first time I was in there.

"Q. Now when you borrowed the money from Mr. Lennon and Mr. Hampton, did you give them any evidence of the debt? Did you sign a note? A. Yes. As I recall, they had probably a form IOU note which I signed.

"Juror: Did it carry any interest?

"Witness: No, sir.

"Q. Was it paid into the Tenants' Protective Association or Mr. Lennon and Mr. Hampton? A. I'd have to rely on guess work and in recollection. I'm pretty sure it was to the Association rather than to them as individuals. (425) I think I'd remember it.

"Q. Did you get a copy of it? A. No, sir.

"Q. Have you paid back any part of it? A. I have not.

"Q. Have Mr. Lennon or Mr. Hampton asked you for any part of it since that time? A. No, sir. However, I should add they have known my job and financial situation pretty much since then too and I guess they would feel it's a question of either letting me go for a while or putting me in jail for it.

"Q. Have you had any discussions with anyone concerning this loan? A. In terms of paying it back?

"Q. Yes, sir. A. No, sir. I don't want to say that. I probably have referred to it on occasion, as infrequently as possible, because I was embarrassed but——

"Q. Well, now, did you give Mr. Lennon or Mr. Hampton or Congressman Powell any part of this $3,000 after you cashed the check? A. No, sir.

(426)

"Q. You are absolutely sure of that? A. Yes, sir. Now, as I say, I did cash other checks and so forth for Mr. Powell. There were many transactions between us, transactions where I was just really being a messenger, so there was cash money I would give him as a result of checks but never any suggestion that I was relieving my debt at all, nor would it have been a proper suggestion.

"Juror: If your total debts, as you have told the grand jury here about repaying, were roughly

$1,000—if your total indebtedness at that time was only approximately $1,000, how did you justify asking Powell for $3,000?

"Witness: Well, I had no realistic expectation of getting a job in the near future. I was trying regularly. I should add my chief desire and skills such as I may have are in the field of community organization work and budgets for those organizations are notoriously low which I can prove from person experience, and especially in the summer, I might add, there's very little hiring going on in those organizations and not too much in the rest of the year.

(427)

"Juror: Was there any feeling in your mind that as long as Mr. Powell was willing to arrange a loan for you to hit it for as much as you could get it?

"Witness: Certainly not in those terms, sir. I may have felt I would like as much as I could have so as not to have to make recurring loans and also not to have to hold up my friends who had been so generous to me in the past.

"Q. You testified here you wanted more than $3,000. A. No. I said I didn't know. I mean to say I didn't know how the 3,000 was arrived at, whether I asked—I don't think I asked for that specific sum, but it was a question of how broke I was, how broke I was likely to stay and measured up against the resources that could be made available to me. I don't think I sat down and said, 'Well, I need so and so many dollars a week,' and conjectured I'd be out of work for so many weeks.

"Q. When you needed this money, did you approach your father for a loan? A. No, sir; I did not.

"Q. Was there any reason for not doing that? (428) A. Yes, sir. I hope that what I say will be understood and not reflect on my father or his generosity, because he's an exceedingly generous man and he's been more than generous to me. I have on occasion and have then borrowed lumps of money from him. Furthermore, I was, I guess, 26, 27 years old at the time, had a lot of money invested in me by my father for education and was in a sense not justifying his hopes for me. I was single. I was socializing a lot. I was living at home under very fine conditions and with all the board and my room completely free to me, and my father very probably would have helped me out. I do not know why with this picture drawn for me there was any room for embarrassment on my part, but I did feel embarrassed asking for any more.

May I add to that in that same context, my expenses were primarily, completely, non-essentials. My car I justified and used it to run around to Washington and Chicago looking for jobs. I certainly could have traveled cheaper by train, I am sure, and the other expenses were likely those of dating and eating out, for instance, (429) with friends who largely picked up the bills, but certainly in a cold logical sense there was no excuse, no necessity for eating out when there was all the food I could possibly want in my parents' home, and a lot of it was dating, and as I said, used up on alcohol. My father is not a teetotaler, but he is also not wildly enthusiastic about drinking. While I was embarrassed to say I did not need money—I did not need money—it was for my own selfish desires.

Paul Klein—for Government—Direct

(430)

"By Jurors:

"Q. Did I understand you to testify that this work of community organization was your principal field of endeavor? A. That's right.

"Q. If that was your principal field of endeavor, from which you expected to gain your livelihood, why did you work for Congressman Powell for free? A. Friendship is the only answer I can give there.

"Q. How did you form that friendship? A. While I was employed in 1949 by a national organization interested in fair employment practice legislation in Washington, I moved to Washington on that job. The particular bill which we were dealing with was a bill introduced by Congressman Powell, and hearings on it were being held under his chairmanship. As a result, we developed an almost daily contact. Almost doesn't quite belong there. We developed literally a daily contact, so much so that for my convenience in working, partly for his benefit, it was a bill he wanted to get through, he offered me work, which was to put the bill through Congress.

(431)

"Q. That was lobbying? A. Yes.

"Q. Did you register as a registered lobbyist in Washington? A. That's right. The organization was the National Council for FEPC, and I think my title was National Director or Washington Director, and I registered as such. In the course of my relationship with Congressman Powell at that time he moved a desk into his office for me and we got to be just more than just professional acquaintances. We'd eat together.

"Q. Do you mean a Congressman of the United States

moved a desk into his office so a paid lobbyist could occupy that desk in Government buildings? A. Yes, sir.

"By Mr. Bolan:

"Q. You say that you deposited the balance of approximately $2,000 in your checking account? A. No, I am not sure. I assume that's what I would have done.

"Q. Is there any reason why you would not have done it? A. None, except the convenience of having cash, but that much cash I wouldn't think of as convenient."

(432)

"Q. Was there any question as to the propriety of the Tenants Protective Association loaning you this $3,000? A. Not in my mind.

"Q. Why is that? A. It just never occurred to me as a question of propriety. It was a functioning organization which presumably on its judgment was in a financial position to enable it to make the loan and did so.

"By Jurors:

"Q. A loan which you did not at that time know how you were going to pay back? A. Yes, sir.

"Q. And which you have not to this day paid back? A. Yes, sir.

"The Foreman: I will ask the witness to be excused for a moment and stand by in the outside room."

Mr. Bolan: Your Honor, no further questions.

The Court: Let me ask the witness: Do you remember that testimony that was just read?

The Witness: Yes.

The Court: Was that testimony true?

The Witness: Do you mean is it true that I gave it?

(433)

The Court: First, is it true that you gave it?

The Witness: Yes, sir.

The Court: Secondly, are the things you testified to there true?

The Witness: To the best of my recollection. Well, let me say this: Everything, the description of my own personal affairs is my present recollection as well as my recollection there.

The statements regarding the loan were my recollection then and are not my recollection today. I just don't recall those things as having taken place.

By Mr. Bolan:

Q. When you testified before the grand jury, was it your recollection that you paid this Mr. Ganser some money out of the $3,000? A. Yes, sir. I forget whether it was just before or just after that. I know before that, because the question you had asked me, Mr. Bolan, I was trying to figure out and I inquired what I had done with it, and either just before or just after my testimony I spoke to Mr. Gamser, and he remembered vaguely that I paid him back substantial amounts in the summer of 1953.

Q. Now, have you talked with anyone in an en- (434) deavor to have your recollection straightened out? A. Yes, sir.

Q. Have you talked to Congressman Powell and asked him about this incident? A. Yes, sir. When you suggested that to me after——

Mr. Feldman: Your Honor, I object to any testimony showing that this witness had a conversation

with Congressman Powell as not being binding on us.

The Court: The fact that this witness talked to Congressman Powell may not be binding on your client at all. We do not know yet. Go ahead. Do you expect to connect this?

Mr. Bolan: Yes, of course. I would like to ask the substance of the conversation, your Honor.

The Court: Go ahead.

Q. But was this the first time that you talked to Congressman Powell about this transaction that you testified about? A. As far as I remember.

Q. Well, now, when Mr. Lennon and Mr. Hampton came to you when Mr. Bulson asked you to appear and they told you you remember about this $3,000? A. That is the only question I think I went to (435) them about.

Q. All right. Now, when they told you that, did it occur to you to ask Congressman Powell whether he recalled the transaction?

Mr. Feldman: Your Honor, may I at this time object? I might be a little slow in getting up sometimes, but may I at this point ask again that if there is being very specific testimony that is attempted to be offered here, whether or not this testimony has any connection with my client going in many of these things, or whether he is just lumping Mr. Lennon and Mr. Hampton together? I would like the jury to know.

Mr. Bolan: The witness said Mr. Lennon was either present or told him.

The Court: That is my recollection of what he said, but the jury's recollection, of course, will

govern. However, let me ask you, Mr. Boland, in connection with all this testimony what is it exactly that you are trying to establish about this $3,000?

Mr. Bolan: I am trying to establish whether or not it was Congressman Powell who had control over this $3,000, or whether it was the Tenants Protective Association.

The Court: Well, the Tenants Protective (436) Association, you say, was a corporation?

Mr. Bolan: A non-profit corporation, your Honor.

The Court: A non-profit corporation, and you say because of the fact that it was a non-profit corporation, that it was controlled by this defendant and Mr. Hampton, that the receipts of that corporation were properly receipts of their own, right?

Mr. Bolan: Yes, sir, your Honor. I point out also that the corporation as such had no authority to make such a loan. I am trying to find out how the money was handled, what happened to the money after it got in or when it got out of the corporation in relation to the time Mr. Lennon had received it from Mr. Kent.

The Court: Now, assuming that Mr. Lennon received the $3,000 and that it went into the corporation's bank account, of the Tenants Protective Association, this witness apparently had first stated that it was an advance to him as a loan and now he has no recollection as to what happened about it, or so he says—and that is subject to whatever the jury may think as to what he said—but have you any proof as to what happened with the $3,000?

(437)

Mr. Bolan: Yes, your Honor. I intend to introduce some additional proof as to what happened to the $3,000, but I would like to get this, if possible, since the proof involves, for instance,——

The Court: Yes?

Mr. Bolan: —an endeavor to attempt to refresh this witness's recollection to see if he can recall anything about this $3,000 at this point.

Mr. Feldman: Well, I think, if your Honor pleases, that the defense is entitled also to have a statement as to whether or not this proof which the Government says it has and intends to offer will be proof which will be binding upon the defendant.

The Court: Well, if it is not relevant proof binding upon the defendant, obviously it does not mean anything.

Mr. Feldman: Well, your Honor, we have now had two hours of irrelevant testimony with this witness.

The Court: I do not think it was irrelevant. It was preliminary proof, and that is what I am trying to find out from Mr. Bolan.

We have now reached the adjournment time. You be back tomorrow morning at 10:30. Court will (438) stand adjourned until 10:30 tomorrow morning.

Mr. Feldman: I would like to ask, with the Court's permission, that an admonition be given to the witness not to discuss this with anyone under any circumstances.

The Court: I am not going to tell him that. He can discuss it with anybody that he wants to, but

if he discusses it with anybody he will have to tell the jury whom he discussed it with if he is asked any question about it, just as he would have to state whom he discussed it with before.

I would say to the witness that you are a graduate of a distinguished law school, having been a graduate of it myself, and you know something about the responsibilities of witnesses, and also the job that you say you are holding is such that you are not unintelligent. I would seriously admonish you to think things tonight.

The court stands adjourned until 10:30 tomorrow morning.

The Witness: Any possible way of my knowing my schedule tomorrow?

The Court: You will be here as long as you are needed.

(Adjourned to October 9, 1956, at 10:30 a. m.)

(439)

New York, October 9, 1956,
10:30 o'clock a.m.

Trial resumed.

The Court: You may call your witness.

Mr. Bolan: Mr. Klein, please.

PAUL L. KLEIN resumed the stand.

Direct examination continued by Mr. Bolan:

Q. Mr. Klein, has your recollection been refreshed in any way since your appearance here yesterday? A. Well,

everything you read to me, I recall what had taken place yesterday.

Q. And you still have absolutely no recollection of having received a $3,000 check from Mr. Lennon through the Tenants Protective Association? A. That is right, sir.

Q. Well, now, if you don't recall having received it, do you recall ever having paid $3,000 to Mr. Lennon for the Tenants Protective Association? (440) A. No, sir.

Q. Did you speak to anyone concerning your testimony after leaving here yesterday? A. Yes, sir.

Q. With whom did you speak? A. I called a friend who is an attorney and told him I was—that I had been here, and briefly gave him my impression as to what had transpired.

And he said, "Well, stay in there." I don't know if there was any choice involved in it. He said, "Stay in there and tell them the truth. That is the best you can do."

Q. Had you spoken to this attorney previously about this matter? A. Yes.

Q. What is his name? A. Sidney Asch.

Q. How is that spelled? A. A-s-c-h.

Q. Do you recall borrowing any sum of money in the neighborhood of $1,000, from Mr. Lennon or from the Tenants Protective Association?

Mr. Feldman: Your Honor, I am going to object; make the same objection that I made yesterday, (441) as not being relevant to the issues in this case.

The Court: I will allow it in an attempt to refresh the witness's recollection. The witness obviously admittedly testified one way before the grand

jury and now says he has no recollection of the facts to which he testified.

Now, if there is anything that can be done to refresh the witness's recollection, all right.

Mr. Feldman: Yes.

The Court: Do you say your testimony before the grand jury was false?

The Witness: I can't answer that yes or no, sir. It was my honest belief at the time, but I have come to change that belief. I believe that what I said before was my honest belief.

The Court: Was it false as a fact?

The Witness: Well, sir, that puts me in a position that I can't handle. All I can say is, I don't recall it. If someone else says it happened, I am not going to say he is a liar.

I am just going to say I don't remember what he says I said.

Q. Mr. Lennon——

The Court: You thought it was true at the (441a) time you testified before the grand jury?

The Witness: I thought what I said, yes, I thought it to be true.

(442)

Q. And Mr. Lennon did tell you that had happened, is that correct? A. Well, again with the same reservation between Mr. Lennon and the other gentleman.

Mr. Feldman: Your Honor, I am going to object and move to strike it out. We have only one defendant here.

The Court: Overruled.

Mr. Feldman: Exception.

Q. Mr. Lennon was present at all times during these conversations? A. As far as I can recall, yes, sir.

Q. He was in agreement with what was said, either by Mr. Hampton or himself, because——

Mr. Feldman: Your Honor, I am going to object as to whether Mr. Lennon was in agreement with anything.

The Court: He was present when it was said, so this man said.

The question is did Mr. Lennon make any statement other than what these two people said.

The Witness: Not that I recall, sir. My general impression, my recollection of it is that between the two of them, and I could not attribute one sentence (443) to one and one sentence to the other and be certain about it, and I just don't you know, keep that kind of notes; it may be that Mr. Hampton said everything and Mr. Lennon nodded or he didn't nod. I got the impression that what my two friends were telling me was the story.

Q. What was your income approximately in 1952? A. I am sorry.

Q. In 1952 what was your income, specifically around the summer of 1952? A. No regular income from February of 1952 on. I set myself up as a consultant in inter-group relations, made occasional fees, but had no regular source of income.

Q. Yet at this time you are unable to state whether you received $3000 as a loan; is that correct? A. Well, not

exactly, sir. I mean, if I am not carping about the phraseology, I have no recollection of receiving such a loan. May I try to make this phraseology——

Q. You say you may have received the $3000 loan but you just don't remember it? A. I don't know anything about having received it, sir. There was a time when I believed that I did, (444) but I don't believe that now.

Q. If you did receive it you don't remember what you did with it, is that right? A. Yes, sir. The account I gave of how I, quote, spent it seems to be, on checking with the friends I have spoken to, accurate in terms that I seem to have paid my debts off. Apparently, if I did get the loan that is how I did it; if I did not, my father kept—or the amounts I had previously from my father were able to carry me over that period until I worked again.

Q. Is it possible that you got a $3000 check from the Tenants Protective Association through Mr. Lennon, then turned it over to—the proceeds from that check to Congressman Powell?

Mr. Feldman: Objected to. Bad as to form. All things are possible.

The Court: Overruled.

A. I am sorry.

Q. I say, is it possible that through Mr. Lennon you got a check from Tenants Protective Association in the amount of $3000, cashed the check and turned the $3000 over to Congressman Powell? A. Well, two levels I would have to say is possible, one, because I have no recollection at all is my basic (445) answer.

Q. The same as you have no recollection of getting $3000? A. Yes. However, I would like to clarify that

one with two very short qualifications. One, you know, although I don't remember it, it is possible; second of all, during that period, as I testified, I was conducting a number of transactions for Congressman Powell, particularly when he was laid up, and what checks, papers and other material they were in that I just have no recollection now, except that I was constantly shuttling around carrying things. I do recall once or twice going to the bank; what the transactions were I just don't know.

Mr. Bolan: No further questions.

The Court: Any cross-examination?

Mr. Feldman: No questions at all, your Honor.

The Court: No questions.

Let me ask you this: Have you been under any medical treatment in the last year and a half?

The Witness: Just casual, cold and like that.

The Court: Have you ever been under any (446) psychiatric treatment?

The Witness: Yes, sir.

The Court: When?

The Witness: Using the word loosely, a clinical psychologist, probably 1954 or perhaps early 1955.

The Court: How long?

The Witness: Just several weeks, maybe two or three months.

The Court: All right.

Mr. Feldman: Your Honor, may I make a motion to strike all of the witness' testimony as not being relevant to the issue in this case?

The Court: I will deny the motion at this time and we will take it subject to connection.

Mr. Feldman: Exception.

The Court: You are excused.

Do you want the witness to remain here for anything further or not?

Mr. Bolan: The Government does not at this point, your Honor.

The Court: It does not.

Mr. Bolan: No.

The Court: All right.

(Witness excused.)

(447)

Mr. Bolan: The Government calls as its next witness Mr. Heinrich Ludeke.

HEINRICH LUDEKE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Bolan:

Q. Mr. Ludeke, what is your occupation? A. I am employed by the Chemical Corn Exchange Bank in 311 Lenox Avenue as chief clerk.

Q. And was a subpoena served on the Chemical Corn Exchange Bank requiring you to produce all bank records and memoranda or any other documents relating to the Tenants Protective Association? A. That is right.

Q. Now in connection with your job as chief clerk, do you have custody of all the records of the bank? A. That is right.

Q. And pursuant to the subpoena served on the bank have you brought with you all of the records of the Tenants Protective Association? A. That is correct, sir.

Mr. Bolan: Excuse me, Your Honor, rather than have the original records, I wonder—we have (448) photostats of most of these, and I wonder if we could perhaps, rather than having the originals marked in any way, use the photostats?

The Court: Have you got the originals?

Mr. Bolan: Yes, sir.

The Court: Show the originals and the photostats to Mr. Feldman, and then if there is any question, why——

Mr. Feldman: The copies we have compared.

The Court: The copies are all right.

Mr. Feldman: Yes.

The Court: Then with the consent of counsel photostatic copies of the records may be substituted in place of the originals for any exhibits of the bank which are offered in evidence.

Mr. Feldman: Certainly, your Honor.

The Court: That will save marking the original records of the bank. All right.

Mr. Feldman: (To Mr. Bolan) Would you join me at the bench?

(Conference at the bench between Court and counsel off the record.)

The Court: Have you got something that this man can identify?

(449)

Mr. Bolan: Yes, your Honor.

Q. I show you Government's Exhibit 16 for identification and ask if you will tell us what that is, sir. A. That is the certification charge pertaining to a check the bank certified for the Tenants Protective Association, I.e. in the amount of $3000, dated July 11, 1952, payable to Paul Klein.

The Court: To whom?

The Witness: Paul Klein.

Q. And does that document show when the check was cashed, sir? A. Yes. The paid stamp is attached on the righthand upper corner——

Mr. Feldman: Your Honor—excuse me, Mr. Ludeke—I object, unless Mr. Bolan is going to offer the check and then we can have—I don't want to go through these formal objections, but in order to protect my record——

The Court: Do you want to offer the check in evidence?

Mr. Bolan: I will offer this in evidence.

The Court: Any objection?

Mr. Feldman: No objection.

(450)

The Court: All right. It is received in evidence.

Mr. Feldman: Your Honor, you understand of course that this is all being taken subject to connection and subject to my original objection that it has no binding effect on my client.

The Court: That is right. The issue in this case is purely one as to whether the defendant Lennon wilfully misstated his income tax, and I am putting that in a colloquial phrase, not the language of the indictment, with intent to defraud the Government by misstating it; and the evidence with reference to the Tenants Protective Association only becomes relevant in the event that the Government can establish beyond a reasonable doubt that the amount received by the Tenants Protective Associa-

tion was in fact received by this defendant or that amounts which were paid out by the Tenants Protective Association in some way got to or for the benefit of this defendant as taxable income. I am taking this evidence subject to connection on that issue.

(451)

Mr. Bolan: Your Honor, at this time there is a small entry that we do not have a photostat of with respect to and which concerns this particular specification, and perhaps Mr. Feldman——

The Court: All right. Show it to Mr. Feldman.

Mr. Bolan: Yes, sir.

(Mr. Feldman and Mr. Bolan converse privately, out of the hearing of the jury and off the record.)

Mr. Feldman: All right.

Q. Mr. Ludeke, do you have any other records in your custody which would show when this check for $3,000 was cashed? I am referring to Government's Exhibit 16. A. Well, there is an entry in this certification book dated——

Mr. Feldman: Your Honor, I am going to object. I understand that is not an entry indicating when it was cashed, but when the bank paid the check. There is a difference between the two concepts.

The Witness: Yes.

The Court: I know that as to a certified check the bank charges for it at the time the check is (452) certified.

The Witness: Yes.

The Court: Do you know when the check was actually presented and the cash paid out?

The Witness: Well, your Honor, may I interrupt?

The Court: Yes.

The Witness: The check—certified check itself was paid and not necessarily cashed but paid on October 28, 1952.

Now, the check could have been either deposited or cashed, and our entries or records here show that the check was in custody by reason of being placed over the window or over the counter, but we have no record in the bank of a deposit being made to this check on this particular day.

The Court: In other words, what would that indicate?

The Witness: From that we would surmise that the check was cashed, but we have no record of that itself because the teller's records, the cash teller's records are destroyed after two years.

The Court: Now, when was the check certified?

(453)

The Witness: The check was certified July 17, 1952.

The Court: Yes.

The Witness: And it was paid by the bank on October 28, 1952.

The Court: Any objection to that testimony?

Mr. Feldman: No, just that I do not have to go through an extensive cross examination, may I just ask a question or two, your Honor?

The Court: All right.

Preliminary cross examination by Mr. Feldman:

Q. Which means that it was either paid in cash or cleared in some way, and you can't state definitely how it was paid? A. No.

Q. Or to whom, is that right? A. That is right.

By Mr. Bolan:

Q. Now, I show you Government's Exhibit 17 for identification and ask you if you can state what that is, sir? A. That is a deposit ticket to the credit of the Tenants Protective Association, Inc., dated July 11, 1952, in the amount of $3,000, drawn on Bank No. (454) 835, and the teller recorded the name here, which probably means the maker of the check, and the name looks like David Kent, but I can't make it out exactly.

Mr. Bolan: I offer this in evidence, your Honor.

The Court: Any objection?

Mr. Feldman: This is the deposit slip?

Mr. Bolan: This is the deposit slip.

Mr. Feldman: Same objection, no——

The Court: Taken subject to connection.

Mr. Feldman: Right.

The Court: All right, received in evidence. I take it, no objection to its being received in evidence——

Mr. Feldman: Sir?

The Court: Except for that objection.

Mr. Feldman: Except for that objection.

(Government's Exhibit 17 for identification received in evidence.)

Q. I show you Government's Exhibit 18 for identification, and ask you if you are able to state what that is, Mr. Ludeke? A. That is the signature card pertaining to (455) this account of the Tenants Protective Association, Inc., and signed by the president of the corporation, secretary and treasurer.

Q. Well, I think the photostat is a little blurred. A. Yes.

Q. Here is the original. A. The president, the secretary-treasurer and co-treasurer. Shall I read off the names?

Mr. Bolan: Perhaps I can speak to Mr. Feldman and we can agree on this.

The Court: Yes, show it to Mr. Feldman.

(Mr. Bolan and Mr. Feldman confer privately out of the hearing of the jury and off the record.)

Q. Mr. Ludeke, would you please read those signatures? A. A. C. Powell, Jr., President, and——

Q. Does that look like Wendlyn Jones? A. Wendlyn Jones, Secretary.

Q. Harrison Jackson? A. Harrison Jackson, Treasurer; Anna C. Perry, Co-Treasurer.

Q. Perry, is that right; P-e-r-r-y? (456) A. Yes.

Q. Does the card contain any statement as to who may sign checks for the account of the Tenants Protective Association, Inc.? A. Any two, the president, treasurer or co-treasurer may sign.

Mr. Bolan: I offer this in evidence.

The Court: What bearing does that have upon this suit?

Mr. Bolan: I want to find out—well, if we estab-

lish who was able to sign the checks, perhaps we can find somebody who remembers signing the check.

Mr. Feldman: At this late date, your Honor?

The Court: Wait a minute, wait a minute; please do not interrupt.

Well, Mr. Bolan, we have here the testimony of Mr. Kent that he paid commissions on the sales of the apartments, that he gave them to Mr. Hampton and Mr. Lennon, that he understood those commissions were going to the Tenants Protective Association, a corporation.

Now, if he was paying those commissions on the sales of the apartments to the Tenants Protective Association, and Mr. Lennon and Mr. Hampton were (45) merely acting as representatives, agents, or conduits for them, how under any circumstances are the commissions on the sales of the apartments part of the income of Mr. Lennon?

Mr. Bolan: Mr. Lennon earned the income from those activities, from selling those apartments, earned it personally, received it personally, and distributed it personally at the request, the Government says, of some third party.

The Court: But we have the testimony of Mr. Kent that in his conversations with Mr. Lennon and Mr. Hampton he understood that those commissions which he agreed to pay on the sales of the apartments would be paid to the Tenants Protective Association.

Now, maybe the Tenants Protective Association should have filed an income tax return; maybe they had no right to be engaged in business or anything like that; maybe they have done something wrong, but where is that income of Mr. Lennon?

Mr. Bolan: Because Mr. Lennon was for all purposes the person who earned the money and who controlled the money and who controlled the Tenants Protective Association.

(458)

The Court: Well, this card does not indicate he is an officer of it, either.

Mr. Bolan: I know, your Honor, and that is what we have to call other witnesses for. This card—we have to lay a foundation as to——.

The Court: I see. You say this is preliminary?

Mr. Bolan: Yes, your Honor.

The Court: On that basis, I will take the card, all subject to connection.

Mr. Feldman: Same objection.

The Court: Yes.

Mr. Feldman: Your Honor, as a practical suggestion might we print the names on the photostat that seems to be a little blurred?

The Court: I think the jury will recall them.

Mr. Feldman: It was just a suggestion.

The Court: Certainly the defendant's name is not one of them.

Mr. Feldman: All right.

The Court: Received in evidence subject to connection.

(Government's Exhibit 18 for identification (459) received in evidence.)

Q. I show you Government's Exhibit 19 for identification and ask you to state what that is, sir? A. That is

the account of the Tenants Protective Association as from January 23, 1952 to—may I see the other book?

Q. Yes (handing to witness). A. Well, it looks like August 31, 1952.

Q. And does that show a deposit of $3,000 to the Tenants Protective Association? A. It does.

Q. And what is the date? A. The deposit was made July 11, 1952.

Q. And does it show a withdrawal of the deposit? A. Yes.

Q. Does it show a withdrawal of the $3,000? A. It does. On July 17, 1952, the amount of $3,000 was debited to the account.

Mr. Bolan: I offer this in evidence.

Mr. Feldman: With the same objection, your Honor.

The Court: I will take it subject to connection.

(Government's Exhibit 19 for identification (460) received in evidence.)

Q. Now, Mr. Ludeke, did you bring with you the ledger sheets for the period subsequent to August, 1952, which you have just testified about? A. That's right.

Mr. Bolan: Here again, your Honor, we have not photostats, and they are very brief entries and I think we can perhaps agree as to what they say.

The Court: All right.

(Mr. Bolan and Mr. Feldman confer privately out of the hearing of the jury and off the record.)

Q. What is the next ledger sheet that you have for the Tenants Protective Association, Mr. Ludeke? A. Start

ing August—rather, pardon me, it is impossible to read this particular figure at this time.

Mr. Bolan: It is clear under the light and if Mr. Feldman would like to see it——

The Court: Show it to Mr. Feldman.

Mr. Bolan: Yes, sir (indicating to Mr. Feldman).

The Court: What is that, a ledger card?

Mr. Bolan: Yes, sir.

The Court: For a subsequent period?

(461)

Mr. Bolan: Yes, sir, and under the light it appears to be January 21, 1953.

The Court: All right. Show it to the witness and see if he can read it now.

The Witness: Yes, I would say yes, this is the balance carried over from the other ledger.

Q. What was the previous balance? A. $29.17.

Q. $29.17? A. Right.

Q. All right. A. And during the year 1953 we have one entry, a credit item of $4, leaving a balance of $33.17.

Q. And do you have a ledger sheet for the period subsequent to this? A. Yes.

The Court: I understand that in the following year there was one deposit of $4, is that all?

The Witness: That is correct.

The Court: In this account?

The Witness: Yes, sir.

The Court: And it had a balance of about $33?

The Witness: Right.

The Court: All right.

(462)

The Witness: Now, the next ledger sheet starts off with a balance of $33.17.

The Court: When? What date?

The Witness: Oh, January 20th, and that must be 1955.

The Court: 1955?

Mr. Bolan: May I look at this under the light, sir?

Q. Will you please look at it again? A. Yes, 1954, I think.

Q. 1954? A. 1954, I beg your pardon; January 20, 1954, and the balance was $33.17 carried over from the previous one.

The Court: Yes.

Q. Any other entries on that? A. There was one debit entry on January 17th for $25.78, and leaving the balance of $7.39.

Q. Do you have any ledger for the period subsequent to that? A. Yes.

Mr. Feldman: Your Honor, at this point I would like to note an addition to my objection because we are now dealing with a post-post situation, (463) and such attention as the defendant could ever have had would have had to have occurred prior to the act, and it certainly could not have occurred in 1955.

The Court: I can't see where any further entries make any difference at all.

Mr. Bolan: Your Honor, may I be heard on that?

The Court: Yes.

Mr. Bolan: The Government wishes to show that the money was never paid back to the Tenants Protective Association.

Mr. Feldman: Your Honor, I am going to object to any such statement. All that this shows is that it was not deposited in the Chemical Corn Exchange Bank.

Mr. Bolan: Yes, but——

The Court: That is right. I do not see how any further entries in this account make any difference. It seems to me you have got to come to the one fundamental issue, which is was the Tenants Protective Association the alter ego of this defendant? That is the only issue in the case. Was it his money?

Mr. Bolan: Yes, sir. Well, I——

(464)

The Court: Now, what happened after that time makes no difference whatsoever.

Mr. Bolan: Well, I think, your Honor——

The Court: Maybe it folded up, or a lot of things might have happened to it.

Mr. Bolan: Yes, but if the money were loaned, for example, by Mr. Klein and——

The Court: It would not make any difference. It would not make any difference. If it was the defendant's own money and he should have reported it as income, that is one thing, and whether it was

a loan, and whether the loan was returned or not later makes no difference on whether in this year of——

Mr. Feldman: 1952, your Honor.

The Court: 1952, this was his income.

Mr. Bolan: Yes. Well, your Honor, the dealings with respect to this money subsequent bears back on the original intention in 1952. If the money just went through Tenants Protective Association for a few days and went to a friend of Mr. Lennon's and never went back to the Tenants Protective Association——

Mr. Feldman: Your Honor, I am going to object.

The Court: That does not make any differ- (465) ence whasoever. If it was his money and he loaned it and it was a bad loan, that is one thing, but if it was not his money that was loaned and it was a bad loan, it does not make any difference.

The question is, was it in 1952 his income? That is the only issue we have got here with respect to this money.

Mr. Bolan: Well, I think——

The Court: And did he wilfully fail to include it in his return, knowing that it was his money and that it should have been reported on his income tax return.

Mr. Bolan: Well, if the money had been returned to the Tenants Protective Association, it would be an indication that it was the Tenants Protective Association's money.

The Court: Not necessarily, I mean.

Mr. Bolan: Not necessarily.

The Court: I don't think these subsequent entries make any difference at all. I will sustain the objection.

Mr. Bolan: I have no further questions.

The Court: All right. Do you have any cross examination?

Mr. Feldman: Yes, sir.

(474)

Redirect examination by Mr. Bolan:

Q. How long were you a teller, Mr. Ludeke? A. I would say from 1944 until '52, roughly. I would have to look up my record; I can't tell you exactly.

Mr. Bolan: No further questions.

Mr. Feldman: No further questions.

The Court: All right. You are excused. Next witness.

Mr. Bolan: I just want to make sure that Mr. Ludeke gets all his records back.

The Government calls as its next witness Mrs. Anna Perry.

ANNA C. PERRY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Bolan:

Q. Mrs. Perry, have you ever been connected with an organization known as Tenants Protective Association? A. Yes.

Q. What was your connection with that organization? A. I was co-treasurer or assistant treasurer.

Q. During what period of time, roughly? (475) A. Well, about in the '40s, about '48, or '49, '48.

Q. Up until when? A. Until about a year ago or maybe a little longer than a year.

Q. Now as such co-treasurer did you with anyone else have power to sign checks for the Tenants Protective Association? A. Yes.

Q. Who else? A. Mr. Jackson, attorney Jackson, Harrison Jackson.

Q. Yes. And who was the other person? A. Congressman Powell.

Q. And any two of the three of you could sign checks for the Tenants Protective Association, is that right? A. That is right.

Q. Now did you ever sign with anyone else or by yourself a check in the amount of $3,000 drawn on the Tenants Protective Association? A. No, sir.

Q. You are positive about that? A. Absolutely.

(476)

Mr. Bolan: I have no further questions.

The Court: Any cross-examination?

Cross examination by Mr. Feldman:

Q. Mrs. Perry, just a moment or so ago you testified that you never signed a $3000 check? A. That is right.

Q. Now, Mrs. Perry, if you saw your signature on a $3000 check would you recognize it? A. Yes.

Mr. Feldman: Would the Government produce the check in issue?

Mr. Bolan: Mr. Feldman is certainly making an assumption on something that is not in the record.

The Court: Well, have you got the check?

Mr. Bolan: No, your Honor.

The Court: Where would such check be?

Mr. Bolan: Such check would be with the Tenants Protective Association, I assume. The Government has subpoenaed it, your Honor. We have not got it as yet.

The Court: It would have been returned to the Tenants Protective Association with the bank statement, I suppose.

Mr. Bolan: Yes. We may have it by tomorrow, (477) if it is available.

The Court: You have subpoenaed it. All right.

Mr. Feldman: Your Honor, I can't continue my cross-examination. I was always under the impression that the Government has had that check for about the past two years, when they took all of Tenants Protective Association's records.

The Court: Have you ever had that check?

Mr. Bolan: No, your Honor. I don't know where Mr. Feldman got his assumption.

The Court: Have you ever seen the check?

Mr. Bolan: No, I have not.

Mr. Feldman: Has Mr. Emanuel ever seen it?

Mr. Emanuel: No, sir.

The Court: Did the Chemical Corn keep photostats of the checks?

Mr. Bolan: No, your Honor.

Mr. Feldman: Your Honor, I can't examine under these circumstances. The witness was asked—

The Court: All right. If you want to ask her

any further questions, all right; if you don't, if you want to wait until tomorrow, why, we can have her return tomorrow.

(478)

Mr. Feldman: I would prefer to suspend, your Honor.

The Court: All right, you suspend.

(To witness) Then you will have to come back again tomorrow. Sorry, but that is the situation.

All right, next witness.

(Witness temporarily excused.)

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(495)

HARRISON S. JACKSON, called as a witness on behalf of the Government; being first duly sworn, testified as follows:

Direct examination by Mr. Bolan:

The Witness: 200 West 135th Street.

Q. Mr. Jackson, have you ever had any connection with the corporation known as Tenants Protective Association, Inc.? A. Yes, I have.

Q. Have you ever had any position with that corporation? A. Yes, I have.

Q. What was the position? A. I was treasurer and chairman of the legal committee.

Q. And during what period of time would this be? A.

From its inception, which was October 22, 1948, up to the present time.

Q. And as treasurer did you have authority to sign checks of the Tenants Protective Association? A. Yes, I did.

Q. Would that be with anyone else? A. Yes.

Q. Which other people were involved? (496) A. Well, there was Mrs. Ann Perry, and I think Mr. Odell Clark. There were three signatures.

Q. I show you Government's Exhibit 18 and ask if this refreshes your recollection as to who was empowered to sign for Tenants Protective Association? A. Yes, it does.

Q. Now who else was empowered to sign with you? A. The president, A. C. Powell, Jr., Gwendolyn Jones.

Q. Pardon me. I call your attention to the language appearing at the bottom. A. Oh. Any two of the following, president, treasurer, co-treasurer. Those three.

Q. Yes. Which would those be? A. That would be A. C. Powell, Jr. and Harrison S. Jackson and Ann Perry.

Q. Thank you. Now, Mr. Jackson, did you ever sign a check in the amount of $3000 for the Tenants Protective Association? A. No, I never did.

Q. You are positive about that? A. Positive.

Mr. Bolan: No further questions.

(497)

Cross examination by Mr. Feldman:

Q. Mr. Jackson, I presume you would recognize your signature if you saw it? A. Yes, I would.

Q. And if you saw your signature on a check drawn on Tenants Protective Association I imagine you would

correct your testimony as to whether you signed it? A. Well, I don't want to differ with counsel, but I was asked if I signed a check for $3000, and my answer——

Q. Your present recollection is that you did not? A. I know that I did not.

Q. You also knew, did you not, that you could sign with Odell Clark?

The Court: With who?

Q. You are quite positive of that?

The Court: With who?

Mr. Feldman: Odell Clark.

A. Well, now, I am not certain that Odell Clark was one of the signatories, but sometime during 1948 and the present time I believe that he did sign—was one of the signatories allowable to sign checks.

Mr. Feldman: Your Honor, I am going to have to suspend at this point for the same reason (498) that I had to suspend with Mrs. Perry.

The Court: Now let me ask you; you were treasurer?

The Witness: Yes, sir.

The Court: Did you get the canceled checks back from the bank?

The Witness: No, they were returned, but I never had charge, Judge, of the cancelled checks, for the reason that checks were in such small amounts while I was treasurer and Mr.—and another person, executive secretary, handled the can-

celled checks, which were very small in number, that is, amount, rather.

The Court: Do you know where the cancelled checks are of the Tenants Protective Association?

The Witness: No, I don't, Judge.

The Court: Who have you subpoenaed for those checks?

Mr. Bolan: The president of the corporation, Mr. Powell.

The Court: You are still treasurer, though?

The Witness: Yes.

The Court: When is Mr. Powell supposed to produce them?

Mr. Bolan: Tomorrow morning, your Honor.

(499)

The Court: Let me ask you one other thing.

By the Court:

Q. You being an attorney, I take it you were the attorney for the Tenants Protective Association? A. Yes, sir, I was.

Q. It is a corporation, is it? A. Yes, sir.

Q. Membership corporation? A. Yes, sir.

Q. Did it ever file any income tax returns? A. I don't recall that it did, Judge, for the reason that there was never any funds to file for. We were usually in the red.

Q. Did you ever receive any sum as much as $3000 at any one time in the Tenants Protective Association? A. I never heard of any such sum being received in the Tenants Protective Association.

Q. If it had been received you as treasurer would probably have heard it? A. I should have.

Mr. Feldman: I still find it difficult to cross-examine without the check.

The Court: Without the check, yes. Well, (500) now——

Mr. Feldman: I can go on to another subject, though.

The Court: With this gentleman?

Mr. Feldman: With this gentleman.

The Court: All right. Then do that.

* * * * *

(675)

New York, October 15, 1956,
10:30 o'clock a. m.

Trial resumed.

The Court: You may call your next witness.

Mr. Bolan: The Government calls as its next witness the Rev. Adam Clayton Powell, Jr.

ADAM CLAYTON POWELL, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Bolan:

Q. Dr. Powell, are you connected with the Abyssinian Baptist Church? A. I am, sir.

Q. What is your position there? A. Minister.

Q. How long have you been a minister? A. Twenty-six years.

Q. And you are also a Congressman from New York City, is that right? A. Yes, sir.

(676)

Q. For how long? A. Twelve years.

Q. And from which district? A. The 16th Congressional.

Q. You, of course, know the defendant Acy Lennon, is that right? A. Yes, sir, I do.

Q. He is a Congressional secretary to you, is that right? A. Yes, sir.

Q. And for how long has he been in that position? A. About ten years.

Q. Now, Dr. Powell, has any pressure in any manner, shape or form, directly or indirectly, been put on you by the White House or anybody in the United States Government in connection with this case?

Mr. Feldman: Your Honor, I object, and I think it is the back door introduction of trying to inject an extraneous issue in this trial. So far as I know, this is a tax evasion trial and not a political arena.

The Court: This is purely a tax evasion trial and there are no politics going to enter into this case as long as I am sitting on this Bench. This is purely a question of whether the defendant is guilty of evading (677) taxes as set forth in the indictment.

You called the witness, Mr. Bolan, and I will sustain the objection.

Mr. Bolan: Your Honor, may I be heard on that?

The Court: I will sustain the objection at the present time. If later on the question becomes appropriate, I will allow it. Go on with the evidence in the case.

Q. Dr. Powell, have you been connected with the Tenants Protective Association? A. Yes, sir.

Q. What has been your connection with that organization? A. I organized it in 1948.

Q. What was the purpose of that organization? A. To try to alleviate high rents being charged and poor conditions under which my people were living in the slum areas of the Harlem section.

Q. Incidentally, Doctor, what is the approximate number of people in your congregation at the Abyssinian Church? A. A little over 9,000.

Q. Did you have any position with the Tenants Protective Association? (678) A. Yes; I was the president.

Q. And how long were you the president? A. Until we dissolved it or until it became defunct, not operating any longer.

Q. When was that? A. Well, we have not dissolved it, I don't think. That is a matter for the lawyer to tell me. But it gradually became defunct due to the fact that it didn't have enough funds to operate with and many of the conditions we were working under we found we could work on just as well in other ways.

Q. Now, directing your attention to the year 1952, did the Tenants Protective Association earn an income from the sales of apartments? A. The Tenants Protective Association received a sum of money in return for putting on a campaign to sell the first integrated, that is, non-segregated co-operative housing project in our city.

Q. From whom was that sum received? A. From the firm that built the Dorie Miller project.

Q. What was the name of the firm? A. I do not know the name of the firm but——

Q. Was it Mr. David Kent? (679) A. Mr. David Kent was the principal in that firm.

Q. And the sum was $3,000? A. $3,000, yes.

Q. So that sum was received, is that right? A. It was a donation received, I am sure it was.

Q. Do you know the circumstances surrounding the receipt of that sum by the Tenants Protective Association? A. No, I don't know. All I know that the sum was received and was told that it was deposited in the bank.

Q. Do you know when the apartments were sold for which this sum was paid? A. No. I would say that the sum wasn't paid until after they were sold; I wouldn't state that it was before.

Q. When did you first learn that the Tenants Protective Association was to receive money for selling these apartments? A. When Mr. Kent came to me and told me—I didn't know him, by the way—that he had advertised in the Daily News, he had a professional real estate office in charge, and he had not been able to sell the (680) idea of integrated housing and wanted to know if I could help.

Q. What did you say? A. I said I couldn't help personally, but I would do everything I can. I got leading citizens, such as Mayor Wagner, Attorney General Javits, people like that to endorse——

Q. You said you couldn't help personally, is that right? A. Personally in that I couldn't sell them personally, no.

Q. Well, now— A. I could use my influence——

Q. As to helping, did he ask you to help sell them personally? A. No.

Q. Was that discussed? A. No.

Q. When you say you couldn't help personally, why did you make that statement to him?

Mr. Feldman: Your Honor, I object.

Q. In response to what was——

Mr. Bolan: I will withdraw the question.

Q. When you told him you couldn't help him person-
(681) ally, was that in response to something he had said? A. Yes.

Q. What did he say? A. He wanted to know—I said I couldn't do it.

Q. You said you couldn't do it? A. Couldn't do it personally.

Q. Sell the apartments personally? A. That is right.

Q. Did he ask you to sell them personally? A. He asked me if I would. I said I couldn't.

Q. Did you have any conversation as to who might sell them? A. I then said I would use all my offices and influence to promote the sale of these apartments.

Q. Did you exert such influence? A. Yes, I did.

Q. Was there any discussion as to who might sell the apartments? A. I told him my offices.

Q. And that would be any particular individual? A. It would be anyone working on the staff, but I did—I didn't work on it, but I did specifically ask Mr. Lennon, Mr. Hampton, to work, if they would, overtime on it.

(682)

Q. And Mr. Kent said this would be agreeable to him? A. Oh, yes, if we could sell them, sure.

Q. You suggested—you told Mr. Kent that you personally couldn't sell the apartments but that Mr. Lennon and Mr. Hampton could? A. And my offices, the church and Congress offices.

Q. Was there any mention of the Tenants Protective Association? A. Yes, there was.

Q. What was said in that connection? A. I said we could work it through that organization.

Q. Was there any mention made as to commissions to be paid to Tenants Protective Association? A. He said he would make a donation. It wasn't in the form of commissions, as I recall.

Q. Mr. Kent said he would donate some money to the Tenants Protective Association? A. Yes, sir.

Q. When you say donate, you mean it was to be given without any consideration from the Tenants Protective Association?

(683)

Mr. Feldman: Your Honor, I object. This is in the nature of cross examination and this is the Government's own witness.

Mr. Bolan: I am trying to determine——

The Court: I think we want to get the conversation, that is all. I will let Dr. Powell give the conversation.

Q. When you say donate, was there any further discussion about that, about a donation? A. No. The discussion was that we would exert all of our influence and that in turn if we rented these apartments, which hadn't been rented for, I think, a year, or I don't know how long, that then he would make a donation to the Tenants Protective Association. Excuse me, I have a cold.

Q. And was there any discussion as to what the basis of this donation would be in terms of dollars and cents? A. No, there wasn't any discussion on that with me.

Q. Did Mr. Kent say that he had already spoken to Mr. Lennon and Mr. Hampton about this?

Mr. Feldman: Your Honor, this is pure hearsay at this point.

The Court: What is pure hearsay?

(684)

Mr. Feldman: "Did Mr. Kent say that he had spoken to"——

The Court: What is hearsay about that? If the Congressman heard somebody say, "I spoke to somebody," that is not hearsay. That is something ~~he himself heard~~. The conversation may be hearsay. Your objection is overruled. He can testify whether Mr. Kent said he had spoken to somebody.

A. Yes, sir, Mr. Kent said he had spoken——

Q. Did he say when he had spoken to them? A. No, he didn't. In fact, they brought him to me and introduced Mr. Kent to me.

Q. Had you spoken to Mr. Kent over the telephone prior to this time? A. I don't recall whether I had or not. I don't think so. I may have, but I don't think so.

Q. You say they brought him to you, is that right? A. That is right, sir.

Q. Did they remain with you while you talked with Mr. Kent? A. They did.

Q. They did. And during that conversation was the arrangement finally determined as to the fact that (685) Lennon and Hampton would sell the apartments? A. That is right.

Q. In your presence? A. They would be the main ones in selling it, that is right.

Q. Did anybody else sell these apartments? A. Anyone that we could muster, both paid workers on the church

staff and paid workers on the Congressional staff, and volunteers.

Q. Now, at the time the $3,000 was given by Mr. Kent did you have any idea as to how much he would give? A. No, I did not. I know he told me that he was paying about $100 an apartment to an agent, which would have been about $30,000. I think there are 300 apartments there on that basis.

Q. When in relation to the payment of the check by Mr. Kent did you learn that it had been paid? A. When either Mr. Lennon or Mr. Hampton told me that it had been deposited in the bank.

Q. Did you ever see the check? A. No, I did not.

Q. You knew then that at about the time it was deposited that it had been deposited? A. Yes, I did.

(686)

Q. Now, did you have any further discussion with Mr. Lennon and Mr. Hampton concerning this $3,000? A. No.

Q. Since the time it has been deposited, have you had any discussion with Mr. Lennon concerning that $3,000? A. Have I had discussions with Mr. Lennon?

Q. Yes. A. Oh, surely.

Q. When was the next time that you recall having a discussion with Mr. Lennon concerning the $3,000 after it was deposited? A. The next time the discussion with Mr. Lennon and I think our legal advisor, Mr. Jackson, and at that time the Tenants Protective Association was becoming inactive and I said we ought to do something with this money, and they said, "Well, what do you suggest?"

I said, "Well"——

Q. Pardon me before you go on, sir. A. Yes.

Q. When was this? A. I don't know the exact date.

Q. Was it a year or two years after the $3,000 had been deposited? (687) A. I don't think it was as long as that.

Q. But, in any event, this was the next discussion that you had? A. Yes.

Q. Now, will you please continue? A. And we talked it over, and incidentally I said then that I thought that it was a very small sum for the job that had been done, considering the work and the $30,000 investment, and because we had spent quite a lot of money ourselves; that is, for putting posters all over Harlem with the names of prominent people that had endorsed the project, people like, as I said, Mr. Wagner, Mr. Javits.

So I said, "Let's give it to Paul Klein who has worked so very hard for many years in many capacities and has never been paid by me."

And he was in debt. He had spent a lot of his personal money: Paul is a zealot in the field of civil rights, and that is the last discussion that we had.

Q. And this was when in relation to the amount being deposited? A. Not too long afterwards. Whether it was a question of six months or six weeks, I don't know.

(688)

Q. Well, now, did you have a discussion with Mr. Klein in March of this year concerning that $3,000? A. Oh, I have discussed it with Paul repeatedly. Paul is a very close friend of mine.

Q. Yes, he is a very close friend, is that right? A. Yes.

Q. How long have you known him? A. I knew Paul when he came to work in my office for the National

Committee for Permanent FEPC, which committee was headed by Matthew Quigley, the prominent Roman Catholic and publisher in Hollywood of trade magazines, and I was the author of the SEPC bill, and Paul came to work on salary on that committee in my office, worked with me, and with the four men who were on my committee, one of whom was Mr. Nixon, Vice-President Nixon, who at that time was a member of my committee and a member of Congress, and Paul did a monumental job, and that is when I first met him and how I met him.

Q. Now, did Mr. Klein tell you that he had been in my office in March? A. Did he tell me?

Q. Yes. A. Oh, yes, yes.

(689)

Q. And did he tell you that I had asked him to speak to you and see what you recalled of the $3,000? A. No, he did not say that.

Q. Did he ask you anything about the $3,000? A. No, he did not.

Q. Well, what did he say to you about being in my office? A. He said—I don't know that he had said he had been in your office, or whether he said it was before the grand jury, I don't know which.

Q. Well, what did he say about the $3,000? A. He said that he had been before some official subject, be it either you or the grand jury, and had been questioned concerning his relationship to the Tenants Protective Association and questioned about his relationship with me.

And I said, "Go ahead and tell the truth, Paul, about everything."

But we didn't go into any details whatsoever.

Q. No details whatsoever? A. No.

Q. You say you have no recollection of Mr. Klein telling you that I asked him to contact you to see what you recall about the $3,000? (690) A. I don't recall that, but I know he did contact me, because I have seen him quite frequently.

Q. Had you at any time told Mr. Klein that you had no recollection of this $3,000 transaction involving him? A. Yes, I told him I knew—whether it went through him or not, I told him that I asked the men who comprised the executive committee to go ahead and make out a check to him for his services, but whether it was made out or not I don't know.

Q. Did you tell Mr. Klein that you had no recollection whatsoever as to this $3,000 as it involved Mr. Klein? A. Oh, no, no.

Q. You never did that? A. Oh, no. I told him I asked the man to make out the check to him for his expenses and for his practically two years of services that I did not pay him for.

Q. Now, have you had any discussion with the defendant Lennon concerning this $3,000 item? A. Oh, surely.

Q. When was the first time? A. Oh, I don't recall, but repeatedly I saw Mr. Lennon, and I saw Mr. Lennon every day that I am in the (691) office.

Q. Has Mr. Lennon ever told you of a conversation that he had with Mr. Klein? A. No, he did not.

Q. He never mentioned to you that he had talked with Mr. Klein? A. No, he never mentioned that he had or had not.

Q. Did Mr. Klein ask you for $3,000 in 1952? A. He did not.

Q. You are absolutely sure of that? A. I think so. I am almost positive.

Q. Did Mr. Lennon ever tell you that he had told Mr. Klein that Mr. Klein in 1952 had asked you for $3,000, and that you——

The Court: Objection sustained.

Q. Doctor, you have been asked to produce all the records of the Tenants' Protective Association, is that correct? A. Yes, sir.

Q. Have you brought those with you? A. No, sir.

Q. What is the reason for not bringing them? A. The first one is that I never had the records, never had possession of them.

(692)

Q. And what is the second reason? A. The second reason is that in the primary fight which I had in 1952, which was managed by Joseph Ford against me, why, thieves broke into my Congressional office, and it is a matter of police record, and they not only seized all the records there but committed acts of vandalism.

We suspected that this might happen and we had taken out the usual files, our master index of the Democratic voters, because that is what I think they were after.

Now——

Q. When was this? A. Excuse me?

Q. Did you finish? A. No.

Q. Continue, sir. A. Then I understand when I was in Europe on Government business two agents of the Federal Government came to my office and asked for the records and they were given to them.

Q. You understand this? A. That is right.

Q. When was this, sir? (693) A. I don't know when it was. It would have to be during July or August, or early September.

Q. Of which year? A. It was either last year or——

Q. And you say records were given? A. Were given to them, and they spent——

Q. Which records were they? A. All the records of the Tenants Protective Association.

Q. Well, did I understand you to say that there had been a burglary in 1952? A. That is right, and some of them were taken, yes, some of our records were taken.

We have two offices, one on Seventh Avenue, and the other one is in the community center of the church, and the records on Seventh Avenue were taken, and some were left in the offices of the church, and what records were left I don't know, but all of these were turned over to the agents, and I think their names were Mr. Bolson and Mr. Emanuel.

Q. Bolson and Emanuel? A. Yes. They were also given these records and I think that they have given them back.

Q. Do you know—do you know whether the $3,000 (694) check was taken, Mr. Powell? A. I don't know.

Q. Have you been told by any member of the Tenants Protective Association that it was? A. No one ever told me.

Q. You don't know? A. No.

Q. Do you know if the $3,000——

Mr. Bolan: I will withdraw that.

Q. Now, when did this theft occur? A. The theft occurred during the primary, the week before the primary in 1952.

Q. When would that be, sir? A. I don't know, because the primary dates are shifted back and forth and they have changed during the past four years.

Q. Now, let us see if we can refresh your recollection. Was that theft made at a time when Mr. Kent was questioned by a Senate committee as to the Dorie Miller project and concerning the $3,000 payment he made to you? A. I don't know.

Mr. Feldman: Your Honor, I am going to object.

Q. You don't know? (695) A: No.

Mr. Feldman. I am going to object as sort of a back door device of refreshing the witness's recollection with no justification for the use of such a device.

The Court: I will overrule it. The District Attorney is trying to get the date and asking if that will help him. I will allow the question. Please read the question.

(Question and answer read.)

Q. You have no memory as to whether or not it was that time? A. No, because you see Mr. Kent was questioned by the Senate committee privately.

(696)

Q. Well, was it in between the time he appeared privately and the time that he appeared publicly? A. That is what I am coming to. I did not know that he had been questioned privately until I came back from Europe that summer and learned that a public investigation was being scheduled at the Hotel Astor.

Q. And you did not know—A. And then I found out that he had been privately before a Senate Committee prior to that. What date I don't know.

Q. And you are not able to say whether the theft occurred before he appeared publicly? A. I don't know. I would say no because of this: I came home from Europe in September late, and the public investigation was held them, and the primary was held before late September, but we have gone through changes in the primary laws in New York.

Q. Yes. A. It used to be in the spring, and then they shifted it to the summer. Therefore, it would have occurred I think prior to Mr. Kent's public appearance before the Senate Committee, which was the first time that I knew that he was publicly questioned before the (697) Senate Committee.

The theft is a matter of police record also.

Q. Now, you say that you have had no discussion with Mr. Lennon concerning the payment of $3000 to Mr. Klein? A. No, no discussion.

Q. No discussion at all? A. No.

Q. Mr. Lennon apart from being your congressional secretary has also been your campaign manager, is that right? A. Yes, after I got rid of Joe Ford Mr. Lennon became my campaign manager.

Q. And when was that? A. I don't know when that would be. It would be about '48, I guess, '48 or '50, either '48 or '50.

Q. Well, Mr. Ford was as a matter of fact, your campaign manager up to 1951, wasn't he? A. Well, if he was then Mr. Lennon became campaign manager in '51.

Q. And he still is? A. No, not now.

Q. When did he cease being your campaign manager? (698) A. It seems when he became involved here and when I thought it best that he not be the campaign manager until this thing here was resolved.

Q. And Mr. Lennon has always worked for you or has also worked for you in another capacity other than congressional secretary, has he not? A. Mr. Lennon was director of the boys' work in our community center, which is open to all children in our area irregardless of their faith or church.

Q. And he held this job simultaneously with his job as congressional secretary? A. Yes, a part-time job.

Q. What is the salary that Mr. Lennon has received approximately?

Mr. Feldman: I am going to object to that. There is no issue about that in this case.

The Court: Is there going to be an issue on that related to unreported income? What is it that you wish to establish by asking that question?

Mr. Bolan: I wish to establish the relationship between this witness and the defendant.

The Court: Well, that has been established. Is that question related to what salary he got, or is there any issue about the salary being unreported? (699) If there is, then all right.

Mr. Bolan: No, there is no such issue.

The Court: Then I will sustain the objection.

Mr. Bolan: All right.

Q. Well, now, you also consider Mr. Lennon a very good friend, do you not? A. Anyone that worked for me over a period of years has to be a good friend.

Q. So he is a very good friend, then? A. He is.

Q. And when he got into these tax difficulties did you have any discussions with him concerning them?

Mr. Feldman: Your Honor——

The Court: The objection is sustained.

Q. Well, have you had any discussions with Mr. Lennon concerning the subject matter of his tax troubles

Mr. Feldman: Objection.

The Court: I will sustain the objection to the form of that question, yes. You may ask him whether he has discussed this indictment with him, or something like that.

Mr. Bolan: All right.

(700)

Q. Have you discussed the indictment with him before? A. Yes, indeed.

Q. And during that discussion wasn't there a discussion about this $3000 payment?

Mr. Feldman: Objection, if your Honor pleases.

The Court: I will sustain the objection to the form of the question. I will let you ask him was there a discussion about the $3000 payment.

The Witness: Yes, sir.

Q. Oh, there was? A. Yes.

Q. Well, perhaps I misunderstood you, but did you say before that you did not have any discussion? A. I don't recall that, because Mr. Lennon told me that it was raised in this court and upon reading the papers and seeing it there, sure I discussed it with him.

Q. And did you discuss with him the matter of whether this $3000 was paid to Mr. Klein? A. He did.

Q. And what did he say? A. He said he did not recall what had happened (701) to it.

Did I?

I said I didn't know because all I did was to order the check to be issued.

Q. Did he say whether anybody else in the Tenants Protective Association had recalled what had happened to the $3000? A. He did not.

Q. And the records had been stolen so they could not check with them, is that right?

Mr. Feldman: Your Honor, I object.

The Court: Well, I will sustain the objection to the form of the question.

Q. Well, did Mr. Lennon have a position with the Tenants Protective Association? A. Yes, he was one of the officers. I don't know what office it was. We had about seven members on the board of trustees. It was an incorporated body.

Q. And do you know who was empowered to sign the Tenants Protective Association checks? A. I don't recall who was empowered because the signatures were changed at one time, but I can't recall that as to any specific time as to who would (702) be empowered, but it would be one of the seven officers or two of the seven officers.

Q. I show you Government's Exhibit 18 and ask you if this refreshes your recollection? A. Adam Powell——

Q. Before you proceed, sir, I call your attention to the notation in the lower half of that document, president. A. Treasurer, and co what?

Q. Co-treasurer. A. Co-treasurer.

Q. May sign? A. May sign, well, that is it.

Q. And which three would that be? A. That would at that time be the president, secretary, Miss Jones, the treasurer, Harrison Jackson, and the co-treasurer——

Q. Well, the secretary was not empowered to sign, was she? A. No, I am just reading the names.

Q. Pardon me? A. And Anna——

Q. Perry? A. Well, the Perry is blotted out.

Q. Does that refresh your recollection as to who was empowered to sign? (703) A. Yes, at that particular time.

Q. And who were the people?

The Court: Who are the people on there?

The Witness: Adam Powell, Harrison Jackson, Anna C. Perry.

Q. All right. Now, did you sign the $3000 check of the Tenants Protective Association issued to Mr. Klein? A. Not that I know of, I didn't sign. It was the practice in issuing checks, and I know I only had a very bad practice of signing checks in advance.

Q. Well, who in the Tenants Protective Association had charge of the records and the checkbook? A. The secretary or the treasurer has been in charge. I had none of the records.

Q. Are you saying that you did not sign a $3000 check or that you don't recall signing a $3000 check? A. I say I don't recall signing it, but we signed checks in advance. I did not sign many checks at all. There blank checks, which were to be used, and if was a bad practice, but nevertheless one that we used at that time, and it could be filled in for $3000 and signed by somebody else, or by me, but (704) I don't remember.

Q. Did Paul Klein give you $3000 in 1953?

Mr. Feldman: Your Honor, I object. This is completely extraneous to the issue here.

The Court: Oh, I will permit that question.

A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Did Mr. Lennon, the defendant, give you $3000? A. A. No, sir,

Q. Did anyone connected with the Tenants Protective Association give you $3000? A. No, sir.

Q. Now, in July 1952, was Mr. Klein living with you? A. In July 1952? Is that the month of the National Democratic Convention?

Q. I believe it was. A. Well, prior to the Convention he did stay with me about a week and then, of course, he visited me off and on.

I had a beach house at West Hampton which I subsequently sold.

Q. Now, were you in the habit of giving checks (705) to Mr. Klein for him to cash?

Mr. Feldman: Your Honor——

The Court: Objection sustained.

Q. Did you give a $3000 check to Mr. Klein to cash in July 1952?

Mr. Feldman: Your Honor, what relevance does that have to the issues in this case?

The Court: I will let the witness answer it.

A. I don't recall. I may have, because I did not have a checking account at West Hampton, and Paul used to go into town and do many favors for me.

Q. Apart from being the recreational director for children at the Abyssinian Baptist Church, Mr. Lennon participated in other activities in the church, too, did he not? A. No more than any other member would. He held no official position in the church.

Q. Well, specifically with reference to a tax service, Mr. Lennon was active in that? A. Oh, yes. That is a community house project, not the church.

Q. But it is under the sponsorship of the church? A. No, siree.

Q. The church authorized the service? (706) A. No, sir.

Q. The church did not authorize the tax service? A. No, sir.

Q. Did you endorse the tax service? A. Yes, sir.

Q. And Mr. Lennon was active in this tax service? A. Yes, sir.

Q. And Mr. Ford was also active, is that right? A. Yes, sir.

Q. And Mr. Ford was actually in charge of the service for a time? A. Yes, sir.

Q. And when he was in charge Mr. Lennon was active with him, is that right? A. He was one of many that worked with Mr. Ford and he was on Mr. Ford's payroll.

Q. Just one of many? A. Yes.

Q. No difference than anyone else who worked there? A. No, sir, not that I know of. What relationship he had with Mr. Ford I don't know.

Q. Have no idea as to what his relationship was with Mr. Ford? (707) A. No, sir, I do not.

Mr. Bolan: Will you mark this for identification, please.

Q. You say he was just one of many employees of Mr. Ford?

The Court: That is what the witness has said.

Mr. Feldman: Your Honor, may I point out that

the use of the word "employee" has a certain legal significance as well as an ordinary common everyday meaning and——

The Court: You will have the right to cross-examine the witness about that.

Mr. Feldman: Fine.

(Marked Government's Exhibit 20 for identification.)

Q. I show you Government's Exhibit 20 for identification and ask you if this refreshes your recollection as to whether you considered Mr. Lennon just one of many?

Mr. Feldman: Your Honor, I do not see how it could refresh the witness's recollection.

The Court: Maybe you don't, but you have not seen it yet, and neither have I, but perhaps the witness (708) can answer the question.

Mr. Feldman: I think the question is improper as to form and that is the reason for my objection.

The Court: If it is something that will refresh his recollection he can look at it, and if it does not he can say so.

Does that refresh your recollection about what you were asked? I forget what it was, but does it refresh your recollection about that?

The Witness: It refreshes my recollection about many things.

(709)

Q. Well, on the specific question as to Mr. Lennon's connection with the tax service. A. May I read that?

Mr. Feldman: May we have the date, your Honor? We have only three years involved in this indictment, 1949, 1950 and 1951.

Q. Does this refresh your recollection as to when Mr. Lennon succeeded Mr. Ford in the tax—as the head of the tax service? A. No, it does not.

Q. You say it does not? A. It does not, no, it does not; no mention here of Mr. Lennon taking over the tax service.

The Court: Let us not have argument. You go back there, Mr. Bolan, and ask the question.

Q. I will ask you again, does this refresh your recollection as to whether or not Mr. Lennon was merely one of many in Mr. Ford's employ? A. Yes, according to that letter it says that Mr. Lennon was a partner with Mr. Ford. But as far as that definition, he was not the partner, he was one of the partners that worked with him. That is what I understood.

The Court: That is what the witness says he (710) understands.

Q. Does this letter also refresh your recollection as to whether the Abyssinian Baptist Church authorized the tax service? A. I didn't get that in there when I read that before. (Witness examines) Yes, this refreshes my memory that the Abyssinian Baptist Church did not authorize the tax service. It is stated here clearly. May I read it?

Q. The letter states clearly——

The Court: The witness says it doesn't refresh his recollection.

Mr. Bolan: He says it states clearly——

The Court: But it is not in evidence.

Mr. Bolan: I am willing to allow the witness to read where it specifically——

Mr. Feldman: I do not, your Honor.

The Court: You know that is improper, Mr. Bolan. It is not in evidence. The witness has given you his recollection based on that. If you want to offer some evidence, you can offer it separate and apart from that.

Mr. Bolan: Well, I do offer this letter in evidence on the point of the——

(711)

Mr. Feldman: May we not have a description of what it is being offered on?

Mr. Bolan: All right.

The Court: Show it to Mr. Feldman, and you see what it is.

Do you object, Mr. Feldman?

Mr. Feldman: I object to a portion of it, your Honor.

The Court: Do you object to the document being received in evidence?

Mr. Feldman: I do, sir.

The Court: All right. Let me look at it.

(Mr. Feldman hands to the Court.)

Mr. Feldman: Your Honor——

The Court: Wait a minute. I am reading it.

Mr. Feldman: I apologize.

The Court: This letter, Government's Exhibit 20 for identification, bears your signature, does it not?

The Witness: May I look at it? Sometimes the

mail is signed by the secretaries. That is my signature, yes.

The Court: Mr. Bolan, you offer this for this one sentence in here?

Mr. Bolan: Yes, sir.

(712)

Mr. Feldman: I object to it, if that is the sentence which I think the Court refers to, as not being binding on my client at all. It is a statement by a third party as to his understanding. I assume that the Court——

Mr. Bolan: I offer it also with respect to the Abyssinian Baptist Church.

The Court: I don't see that that makes any great degree of difference, Mr. Bolan, except the witness has said he had—it didn't refresh his recollection as to the fact of the partnership between these two at all.

The Witness: No, it did not refresh my recollection as regards Mr. Lennon being the partner with Mr. Ford. But the part about the church there, I would like that cleared up.

The Court: Well, what is your recollection, that they were partners or not partners?

The Witness: That they were partners, along with others.

Mr. Feldman: I am going to object to the Court's question and ask that the witness's answer be stricken out as not being binding on my client at all.

The Court: It certainly is not what this (713) witness understands the business relation-

ship is; there certainly isn't any proof of the business relationship. I will sustain the objection as to the admission of this document.

Q. You do recall a time when Mr. Lennon took over the tax service from Mr. Ford; is that right? A. Yes, sir.

Q. Do you recall when that was? A. No, I do not. It would be around the same period when I parted ways with Mr. Ford.

Q. After Mr. Ford left, did you take any steps to see that Mr. Lennon would take over the tax business?

Mr. Feldman: Objection, if your Honor please. There is no issue in this case that Mr. Lennon operated the tax service from the church. The issue is whether or not there was income and how we are to consider that income.

The Court: That is right.

Mr. Bolan: Your Honor, I want to establish exactly what sort of tax service was being run by Mr. Lennon. I think it has a bearing——

Mr. Feldman: Your Honor——

The Court: I think that has been brought out. (714) The only issue is whether he is reported his income he got from the tax service.

Mr. Bolan: There has been talk of partners and employees and things of that sort.

Mr. Feldman: Your Honor——

Mr. Bolan: This witness is——

Mr. Feldman: The basis of this is that Mr. Lennon operated the tax service——

The Court: For the third time, Mr. Feldman, I tell you don't interrupt when somebody else is

speaking. You don't do yourself or anybody any good if you interrupt. That is not done in this court.

Mr. Feldman: I apologize.

The Court: You will get your chance to talk at the proper time.

Mr. Bolan: There has been some talk that there were commissions paid, that Mr. Lennon did not prepare the tax returns, things of that sort. I would like at this point to get a little evidence on exactly what was the setup in that tax service. This witness apparently——

The Court: I will allow you to ask this witness what he knows about it. I don't know how much he knows.

(715)

Do you have something to object to, Mr. Feldman?

Mr. Feldman: Yes, I do. The position of the defense throughout this trial has always been that there was no issue that in 1953 and 1954 Mr. Lennon was operating a tax service at the church.

The Court: And receiving fees for doing it.

Mr. Feldman: And receiving fees for doing it. We are going off into an exploration which will ultimately bring us to the very fact that we all know about.

The Court: For such enlightenment as it may give to the Court and jury, I will allow you to ask the witness one or two questions about the tax service.

Mr. Bolan: May I have that last question? I think there is a question unanswered, your Honor. (Question read.)

A. I will answer that, in conjunction and with the knowledge of Mr. Lennon did I take any steps?

Q. Yes. A. Yes, sir.

Q. What steps? A. I told Acy Lennon that he could operate the tax service if he operated it scrupulously and without (716) the complaints that I had received concerning Mr. Ford's operation.

Q. And did Mr. Lenonn agree to do that? A. He did.

Q. And where was the office that Mr. Lennon operated his tax service from? A. That is what has been troubling me. I don't know whether that year he operated in the community center, not the church, I repeat that, the center, entirely separate, or whether he rented an office on 135th Street. I know that he had a tax service office on 135th Street and Seventh Avenue, and which years he had it, I don't recall.

Q. Where was this tax office in relation to the church? A. Where was the tax—which tax office?

Q. The one that was in the community center. A. Oh, it is in the community center.

Q. Where is that in relation to the church physically? A. Adjacent to the church.

Q. Are the premises owned by the church? A. Oh, yes.

Q. And are you as pastor in charge of who uses (717) the space in the community center? A. In the community center, yes, but not the church. The space in the church is in charge of the board of trustees and the board of deacons.

Q. Did you take any further steps in conjunction with

Mr. Lennon with respect to this tax service? A. I don't know what you mean by that.

Q. Well, did you sign a letter with Mr. Lennon asking people to use the tax service? A. I imagine I——

Mr. Feldman: Your Honor, I object to that as being completely extraneous to the issue.

The Court: What difference does it make whether he did or he did not? The only issue in this case is whether Mr. Lennon received some fees and he did not report them on his income tax returns. That is the only issue we have on that. And whether he received any compensation from Mr. Ford when Mr. Ford was running it and he didn't report it on his income tax return. Those are the only issues we have on the tax end.

Q. Dr. Powell, would you please state the conversations you have had with Mr. Lennon concerning the $3,000 item since the time that his tax trouble began?

(718)

The Court: I think you have been over that. I will sustain the objection.

Mr. Bolan: Your Honor, I don't think we have——

The Court: You can't ask a general question like that anyway, "Give all the conversations." I thought you thoroughly explored that issue.

Mr. Bolan: I feel that I have not, your Honor.

The Court: Then you have to pinpoint it. I would hate to have somebody ask me to recount the conversation that I had with anybody over five years ago.

Q. When is the first time after Mr. Lennon got in tax trouble that you had a conversation with him with respect to this $3,000 item?

The Court: Objection sustained. We have been over that. That question was asked.

Q. Prior to your appearance on the stand when was the last time you talked with the defendant concerning this $3,000 item? A. I can't recall. I talked to him yesterday after church.

Q. When is the last time—did you ever talk with Mr. Feldman, his attorney? A. Mr. Feldman? Yes, I talked to Mr. Feldman.

(719)

Q. When is the last time you talked to Mr. Feldman concerning this? A. I don't recall. I have only seen Mr. Feldman once.

Q. You don't recall when that was? A. No, I don't.

Mr. Feldman: Your Honor, I don't recall that this witness testified that he discussed any tax service question with me.

The Court: Are you volunteering that?

Mr. Feldman: No. I am objecting to this. If the Court will listen to the questions on the record, there has been a slurring——

The Court: You are objecting to a question.

Mr. Feldman: Yes.

The Court: What is the question you object to?

Mr. Feldman: If the reporter will be good enough——

The Court: You didn't object to it until after the witness had answered.

Mr. Feldman: Because we——

The Court: If you want to object, stand up when you object and I will sustain the objection if it is right. But don't get up and make a speech about (720) something. I will sustain your objection if it is proper.

All right. Let us have the next question. There is no open question now before us.

Q. With respect to the records of the Tenants Protective Association, you say that, just to get the thing into focus, you say that certain of the records were stolen and that another portion of the records were turned over to Government agents, is that right?

The Court: Objection sustained. That has all been over. It is just repetition.

Q. Who is it that told you that these records were turned over to the Government? A. When I came back from Europe, my office told me.

Q. Came back from Europe when? A. I don't know the exact date.

Q. This year? A. Oh, no, no. This was either last year or the year before, as I testified earlier.

Q. Someone in your office told you that records of the Tenants Protective Association had been returned to the Government? A. The fact——

Q. Had been given to the Government? (721) A. They said all my records in Room 2, which is the room in the community center that I use as another office for my work with people outside of the church, all the records.

Q. Did they mention specifically Tenants Protective Association records? A. Yes.

The Court: I think the witness testified that they were given to the Government and the Government returned the records.

The Witness: That is correct.

Q. The Government returned the records?

The Court: Mr. Bolan, the witness testified to that.

Mr. Bolan: Oh, I am not sure that he did.

The Witness: Oh, yes, I did testify to that.

Q. Oh, I am sorry. What happened to those records that were returned? A. Those records that were returned, I understand, were then put up in the tower of the church where we keep all the old records of our church.

Q. Are they still there? A. No. You didn't ask me that.

Q. Oh, I am sorry. Where are they? (722) A. Those records were put in the tower, along with old documents of our church, because our church is almost 150 years old, and the tower is concrete and rock and steel and formerly inaccessible to anyone. But about a year or two years ago the fire department placed many violations on our buildings, because they are about thirty-four years old. One of the violations was——

Q. When was this about the fire department? A. The fire department violations were placed on our building about a year or two ago, two years, I think, because it cost us a tremendous amount of money to meet that. One of the violations they placed on the building was

that we couldn't keep a door to the tower locked, due to the fact that they deemed that they were fire exits over the galleries of the main sanctuary.

From then on we had tremendous trouble with children, because we have thousands of them, using our building and running through there, and in the—this summer, just as I was—just as Congress was coming to a close, during the vacation Bible school for children, children got in there and started a fire, and the fire department of course answered the call and (723) the marshal in charge of the district, or whoever the commanding officer was, gave us twenty-four hours to move every single thing out of those towers. Most of it burned, some of it—all of it water-damaged. And at a cost of $180 we had to move everything. It was a violation served on us, towards the end of Congress this year, which would mean around the last part of July or middle of July.

Q. I am still not clear as to where the records are. A. That is where the records are.

Q. Where? A. Wherever they were moved by the junkman, by the man we had to pay $180 to move.

Q. In other words, as far as you are concerned, they were destroyed? A. All records, church records, my personal records of the past, everything.

Q. When was this, sir, that they were destroyed or given to the junkman? A. By following the fire department after the fire—it would be somewhere, between, around the 20th of July, around that time.

Q. Of this year? (724) A. Yes.

Q. And at that time Mr. Lennon had already been indicted and you had already discussed this question of the Tenants Protective Association with him, is that correct?

Mr. Feldman: Your Honor, objection.

The Court: I will allow the witness to answer.

A. Yes, sir.

Q. And who was it that permitted the records to be given to the junkman? A. Who was permitted?

Q. Yes. Who was it that authorized it in the church? A. There was no authorization.

Mr. Feldman: Your Honor, this, as I understand it, is an interrogation as to the failure to respond to a subpoena duces tecum, and I object because I think it has gone far enough. The witness has not brought the records.

The Court: Let me ask you, Dr. Powell, those records of the Tenarts Protective Association, as far as you know, were they up in the tower?

The Witness: The ones that Mr. Emanuel and Mr. Bolson saw, went over, and returned to us. Yes, sir.

(725)

The Court: They were in the tower in July of this year?

The Witness: That is correct.

The Court: Do you know where they are?

The Witness: No, sir.

The Court: All right.

Mr. Bolan: I just wanted to find out whether he knew that they were—whether those records were given to the junkman with the knowledge that they were involved in Mr. Lennon's indictment.

Mr. Feldman: Your Honor, I think that is completely prejudicial.

The Court: You don't need to go into that.

Mr. Bolan: All right. I will withdraw the question.

The Witness: May I say that anything—everything in the tower was completely destroyed.

Q. Yes, sir. I understand that.

The Court: It was burned or waterlogged.

The Witness: That is right.

Q. As president of the Tenants Protective Association did you have occasion to receive or view the bank statements as they came in with respect to that organization? (726) A. Never looked at them, sir.

Q. Do you know who it was that did receive them? A. I would say whoever were the signers on checks then, or the vice-chairman who operated in my absence, which was considerable, because I was in Washington.

Q. Who was present when you ordered the $3,000 to be paid to Mr. Klein? A. I am trying to think who would be there. I would say it would be Mr. Jackson, Mr. Hampton, Mr. Lennon. It may have been a fifth person, too; I am not sure.

Q. You say you ordered this $3,000 paid to Mr. Klein because——

The Court: He has already testified to that.

Mr. Bolan: All right.

Q. Do you know as president of the Tenants Protective Association whether the Tenants Protective Association filed income tax returns? A. No, I do not know.

Q. You have no knowledge of that. A. No; I know it

is an incorporated body, non-profit, non-partisan, under the laws of the State of New York.

Mr. Bolan: I have no further questions.

(727)

Cross examination by Mr. Feldman:

Q. Dr. Powell, up until your appearance on the witness stand this morning has anyone from the Government ever attempted to talk to you or talk to you concerning your knowledge of these matters that you were interrogated on this morning? A. No one, sir.

Q. There were two questions in there: One is, did anyone attempt to talk to you? A. No, sir.

Q. And the other one was did anyone talk to you from the Government? Did anyone from the Government talk to you? A. No one, sir.

Q. Tell me this, Dr. Powell. So far as you know, concerning the operation of TPA, were those records destroyed to forestall any effort by the Government to prosecute this case? A. I can't say yes or no to that.

Q. Do you know of anything in those records, Dr. Powell, which would in any way reflect on you or on the operation of TPA? A. I do not know. I don't think so.

Q. Has anybody from the Government, either (728) Federal or State, made any effort, Dr. Powell, to discuss the tax status of TPA? A. No, sir, not that I know of. They may have discussed it with some other officer.

Q. But as far as you know. In discussing the work that Mr. Lennon did with regard to the sale of these Dorie Miller apartments, as I understand it from your testimony, you instructed Mr. Lennon to work on that? A. I requested Mr. Lennon and Mr. Hampton and all of our

staff to do their best to aid this worthy project because we needed new housing especially for my people.

Q. So far as you know was that request carried out? A. To cooperate?

Q. Yes. A. Oh, yes. We sold apartments, and the buildings are there; and they are fine, and people are happy.

Q. And you knew, did you not, at the time that this was going on that Mr. Lennon was doing this; is that right? A. Mr. Lennon was one of those; yes, sir.

Q. One of the persons who was doing this? (729) A. That is correct.

Q. And so far as you knew, Doctor, was Mr. Lennon doing this as a personal business enterprise or as part of his duties and someone affiliated with you and with the Tenants Protective Association? A. Not as a personal business enterprise.

Q. Not as a personal business enterprise? A. Not as a personal business enterprise, as far as I knew.

Q. Tell me this: You were questioned quite extensively as to the closeness of your association with Mr. Lennon. How long have you known him? A. Oh, I don't know how long; I have known him many, many years.

Q. You talked about his work with the use of the center, is that right? A. That is right.

Q. Now, as I understand your testimony, Dr. Powell, it was Mr. Lennon's function in the community center to work with the children, is that right? A. The boys especially.

Q. Was that under your direction? A. Well, as the minister in charge of the church and the community house, yes.

(739)

Q. Who had appointed him? A. Oh, I appointed him. But only with the approval of the director of activities.

Q. I understand. You selected Mr. Lennon as a person being particularly fit to work with children? A. Oh, yes.

Q. And how long had he been working with children, Dr. Powell, so far as you know? A. I don't know. But I know recreation and juvenile club work was one of the things that he had done before he came to me.

Q. Now, of your own knowledge, Doctor, do you know whether or not Mr. Lennon ever was a partner of Mr. Ford's? A. Not in the sense of being the partner, but in the sense of being one of those working with Mr. Ford in Mr. Ford's tax business, yes.

Q. Mr. Ford actually ran that tax business himself? A. He surely did.

Q. From a political hierarchial point of view, while Mr. Ford was there——

The Court: That is a little bit complicated. Hierarchy relates to the church as a rule and political (730a) relates to government. So I think you are getting into a rather involved sentence.

Q. Well, blocking the matter for your Honor, from the point of view of politics, Dr. Powell, while Mr. Ford was with you, who occupied top dog position? Mr. Ford or Mr. Lennon? A. Oh, Mr. Ford.

(731)

Q. As a matter of fact, so far as you know, it was Mr. Ford who directed Mr. Lennon, is that right, in his political activities in your behalf, while Mr. Ford was there?

A. Yes, when I was not present, when I was not in town, yes.

Q. I understand. Dr. Powell, in addition to your association with the defendant politically and in church work, that is, council house work or community house work, were you also Mr. Lennon's personal minister? A. Oh yes, yes.

Q. Tell me this, Dr. Powell, in the course of your personal ministry with Mr. Lennon did you come to learn the nature and extent of his family? A. Yes, I did.

Q. Now are you in a position, Dr. Powell, to tell us how many children does Mr. Lennon have? A. As a minister, and the confidences that I have with parishioners, I beg leave not to answer that question.

Q. Do I understand your statement to be, Dr. Powell, that as Mr. Lennon's personal minister you are a holder of confidence from Mr. Lennon? (732) A. Oh yes, all my communicants.

Q. Does this relate specifically to the question of children? A. It relates generally to all questions.

Q. Well, do you hold any confidence from Mr. Lennon with regard to children?

The Court: Mr. Lennon of course is in the position to waive any privilege if he wishes to do so. But Dr. Powell does not have to answer any confidential question.

Mr. Feldman: Then I will withdraw it.

The Court: Unless the privilege is waived.

Mr. Feldman: I will withdraw the question, your Honor.

The Court: So that the jury will understand,

confidential communications to a priest or minister, the minister or priest cannot be compelled to reveal them, and if the person whose confidence is given to him says, "I have no objection," then he can. Just the same as a doctor or lawyer. The same privilege extends to ministers.

Q. So far as you know, Doctor, going back to this question of $3000, you directed that $3000 be given from the funds of TPA to Mr. Klein? (733) A. Yes. I suggested it, suggested, which would be a better word, but I guess I suggested it, which would be the expression.

Q. So far as you know, Doctor, was it the practice with regard to the operation of TPA to sign checks in blank in advance? A. Yes, it was, unfortunately.

Re-direct examination by Mr. Bolan:

Q. Did you say unfortunately, sir? A. Yes, unfortunately. I don't think it is good business.

Q. Why— A. It is bad business practice to do it.

Q. In this particular situation do you have any reason for saying it was unfortunate that— A. Oh no, not in this particular situation, just in general.

Q. But in this case it wasn't unfortunate? A. Just in general is unfortunate that anyone should sign checks in blank.

Q. You say that Mr. Lennon worked with the youth of the church, is that right? A. That is right.

Q. About how much of his time did he devote to (734) those activities say during the years 1949, 1950 and 1951? A. I would say it would average about three hours a day, not counting of course teaching in the sunday school.

Q. And I take it that the rest of the time he devoted

himself to his duties as your congressional secretary? A. You see, we operate from 9 o'clock in the morning until 11 and 12 at night some time. And there is no set schedule. My people put in 60, 70, 80 hours work, which is against the Wage and Hour Law.

Q. And do you know how much time he spent in the tax service when he was in charge of it? A. No, I do not know. It would be roughly a month or two before income tax filing date.

Q. When he was selling these apartments do you know how much time he devoted to that activity? A. No. Everybody was working on that. We had the office open all day and evening.

Q. When you say everybody, did anyone else, apart from Mr. Lennon and Mr. Hampton, sell apartments for the Dorie Miller Project? A. No, they would be the final ones for the final (735) application.

Q. And did you assist them in any way in connection with selling those apartments? A. Oh yes; I mentioned it from the pulpit, wrote letters, got Mayor Wagner to endorse it and used his name on posters; got my colleague Congressman Javits, now Attorney General, to do the same. I had about 15 prominent people in New York who gave their names to the posters which were put up all over the streets of the community.

Q. While Mr. Lennon had all these activities did he also operate a luncheonette?

Mr. Feldman: Your Honor, there is no such issue in this case. We have a very simple tax issue here.

The Court: I think we do. What difference does it make?

Mr. Bolan: Mr. Feldman brought up the question about working with the youth. I am trying to find out how much time he could have devoted to the youth if he had——

The Court: I will allow the witness to answer whether the defendant also ran a luncheonette.

The Witness: He owned a luncheonette, but he (736) didn't work in it; his wife was in charge of it.

Q. You say he never worked at that luncheonette? A. Not that I know of, because one of his problems always to me was where can he get someone to help in the place because he did not have the time.

Q. Did Mr. Lennon also have a job beginning the end of 1953 as resident agent of the Dorie Miller Apartments? A. Yes, sir. I think he and Mr. Hampton were the managers of the Dorie Miller Apartments.

Q. Do you know how much time Mr. Lennon devoted to that activity? A. No, I do not know.

Q. Do you have any idea? A. No, none whatsoever.

Mr. Bolan: I have no further questions.

The Court: Let me look at Exhibit 20.

(Mr. Bolan hands exhibit to the Court.)

The Court: Do you wish to reoffer this, in view of the witness's statement in answer to cross-examination?

Mr. Bolan: Yes, your Honor, I do.

The Court: Mr. Feldman, in view of the questions that you asked this witness on cross- (737) examination, isn't the Exhibit 20, at least one sentence of it, properly admitted now?

Mr. Feldman: For the very same reason that

it was improper at the time that I objected when it was offered on the Government's direct.

The Court: You opened that issue up.

Mr. Feldman: I did not open it. It was opened on direct——

The Court: Give it back to me.

I will allow it to be received in evidence, not as to the facts in the case but as to this witness's understanding as to the relationship between Ford and Acy Lennon in the income tax business. The witness has testified on cross-examination that he did not understand that they were the partners in the business. Now this letter apparently seems to be contradictory of that in part as to his understanding.

Mr. Feldman: First of all I do not think it is, your Honor, and, secondly, it does not make it any more admissible because we are not dealing with this witness as a defendant. We are dealing with this witness as someone coming in here testifying as to a legal relationship.

The Court: That is right.

(738)

Mr. Feldman: If it is being offered, if the Government is offering the letter now for the purpose of impeaching this witness, if they are offering this letter for the purpose of saying to the Court and jury that this witness is not telling the truth——

The Court: That is not it. But the witness apparently—as I understood your testimony you did not understand that Mr. Lenonn and Mr. Ford were the two who ran the tax business?

The Witness: That is correct. Mr. Ford ran it

absolutely. Lennon may be and probably was his chief lieutenant, but Mr. Ford operated it exclusively.

The Court: Do you wish to offer it or not?

Mr. Bolan: I will withdraw the offer, your Honor.

The Court: All right.

Mr. Bolan: I do have another question.

By Mr. Bolan:

Q. When Mr. Lennon was operating the tax service from the Abyssinian Baptist Church Community House, was he charged with any rent? A. No, sir.

Mr. Bolan: No further questions.

(739)

Re-cross examination by Mr. Feldman:

Q. When Mr. Ford operated his tax service was Mr. Ford charged any rent? A. No, sir. We charged no rent for any activities.

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(777)

HANLEY J. BULSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Bolan:

Q. Mr. Bulson, what is your occupation? A. I am employed by the Internal Revenue Service, Office of the Regional Commissioner, Intelligence Division.

Q. What position do you have? A. I am a group supervisor.

Q. And how long have you been with the Internal Revenue? A. Well, that is close to eleven years.

Q. During your employment you have acted as a special agent of the Internal Revenue Service, is that correct? A. Yes.

Q. While you were a special agent, did you commence an investigation into the income tax returns of (778) a man named Acy Lennon? A. Yes.

Q. Now, during the course of that investigation did you make an effort to obtain certain documents of Tenants Protective Association? A. Yes.

Q. What documents did you attempt to obtain? A. I wanted to obtain the books and records of the association and I went up on the 6th of May, last year, accompanied by another agent, Ralph Sorrentino, to the Abyssinian Baptist Church, and I met Mr. William J. Hampton, and I asked him for the records of the Tenants——

Q. Did he have a connection with the Tenants Protective Association? A. He was an officer, I believe.

Q. All right. A. I asked him for the records of Tenants Protective Association, and he left the room we were in and came back a short while thereafter with some records. He had a card file and an envelope. And the card file contained 4 by 8 cards indicating——

Mr. Feldman: May we just not have the witness testify as to what was on the cards?

(779)

The Court: Don't tell us what was on the cards.

A. The card file consisted of 4 by 8 cards and the envelope contained a deposit book of the bank account of the Tenants Protective Association in the Corn Exchange Bank. And they were—and there were also some bank statements I believe from about April, 1954 to around March, 1955.

And I asked Mr. Hampton if there were any other records——

Mr. Feldman: If your Honor please, any conversation with Mr. Hampton is not binding on my client and the subject at this point is quite remote from Mr. Lennon.

The Court: All right, so understood. He asked Mr. Hampton if there were any other records, and then what was Mr. Hampton's answer?

Mr. Feldman: I object to any conversation at which my client was not present.

The Court: Did you get any other records?

The Witness: No, your Honor.

The Court: All right.

Q. As the agent in charge of the case, would you have been in the position to know whether any other (779a) agent of the United States had obtained those records? A. I would have been in that position, yes.

Q. Did any such information come to your attention? A. No.

Q. Did you procure from the Tenants Protective Association, or any individual, any records of the Tenants Protective Association?

Mr. Feldman: Your Honor, at this point I assume that all of these questions relating to the

Tenants Protective Association are being taken subject to the same objection that was made at our last session.

The Court: That is right, they are. Go ahead.

Q. Did you take into your custody any records of the Tenants Protective Association, or from any individual? A. No.

Q. And do you know if any other agent of the Government took into custody any records of the Tenants Protective Association? A. Not to my knowledge when I had jurisdiction over the case.

Q. Well, now, did someone succeed you in that (780) jurisdiction? A. Yes.

Q. Who was it? A. Special Agent Morris Emanuel.

Mr. Bolan: I have no further questions.

The Court: Any cross examination?

Mr. Feldman: None at all, your Honor.

The Court: All right, you are excused. Next witness.

(Witness excused.)

Mr. Bolan: Now, I would like to call Mr. Emanuel, your Honor.

The Court: All right.

MORRIS J. EMANUEL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Bolan:

Q. What is your occupation, Mr. Emanuel? A. I am a special agent of the Intelligence Division, Internal Revenue Service.

Q. And how long have you been in that position? A. I have been in that position a little over three years.

(781)

Q. How long have you been with the Internal Revenue Service? A. Sixteen and a half years.

Q. Did there come a time when you took over the supervision of an investigation of the defendant, Acy Lennon? A. There did.

Q. From whom did you take that supervision? A. From Special Agent Hanley J. Bulson.

Q. Now, you have been in charge of the case since that time, is that right? A. That is right.

Q. Now, during the time that you were in charge of the case did you obtain any records of the Tenants Protective Association——

Mr. Feldman: Your Honor——

Q. —of any kind from any source?

Mr. Feldman: Your Honor, at this point I assume that this testimony with regard to the TPA is subject to the same objection.

The Court: Connection.

Mr. Feldman: Connection, yes.

The Court: Yes.

A. I did not.

(782)

Q. And would you have been in a position to know whether any other agent of the Government obtained such records? A. I would.

Q. And did any such information come to your attention? A. Not to my knowledge.

Mr. Bolan: No further questions.

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(800) * * *

GLEN D. SMITH, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Bolan:

Q. Mr. Smith, what is your occupation? A. I am a technical adviser.

(801)

The Court: Speak up so that everybody can hear you.

A. Technical adviser in the Internal Revenue Service at 90 Church Street.

Q. Well, before we go into your duties, would you briefly state your educational background? A. Well, I have a master's degree in accounting.

Q. And where did you obtain that, sir? A. At Benjamin Franklin University, in Washington, D. C.

Mr. Feldman: Your Honor, I don't mean to interrupt, but I can't hear him.

The Court: You will have to speak up louder. Shout. This is a big barn of a courtroom, so you will have to talk pretty loud.

Q. Does that school specialize in accounting, Mr. Smith? A. It does. It is the equivalent of what used to be termed the Pace School here in New York. It is a similar school.

Q. Now when did you join the Internal Revenue Service? A. Early in 1935.

(802)

Q. And how long have you been in the office of the Regional Counsel as technical adviser? A. Since July of 1952.

Q. What are your duties as technical adviser? A. Well, I render technical advice concerning tax matters and any other questions about taxes that the Regional Counsel would like to know.

Mr. Feldman: I can hardly hear the witness.

The Court: You are letting your voice drop and they can't hear you. Just speak out loud.

The Witness: Thank you, your Honor. I will do better next time.

Q. Are you familiar with the technical features of the tax laws, particularly with respect to income taxes? A. I am quite a bit familiar with it.

Q. And you have examined literally thousands of re-

turns and audits in your duties; is that correct? A. Yes, I have.

Q. And have you ever testified as a tax expert? A. Yes, I have. Several times.

Q. About how frequently do you testify as an expert? A. I would say it is about two or three times (803) a year. Is that loud enough?

The Court: A little louder. Do you want a glass of water, if that will help?

The Witness: That is what I need.

Mr. Bolan: Your Honor, I submit that the witness is qualified.

The Court: Well, don't you submit anything. Ask your next question.

Mr. Feldman: Your Honor, may I have a voir dire examination on the witness's qualifications to testify in this case?

The Court: I don't know what he is going to testify about.

Mr. Feldman: Well, that is the subject of——

The Court: Let us have the question first that he is going to testify about and then we will see whether a voir dire is needed.

* * * *

(806) * * *

Q. Mr. Smith, assume that a taxpayer operates an income tax service and in connection with operating that tax service prepares returns for clients who pay this taxpayer fees for preparing those returns. Is the taxpayer under the law required to report on his income tax return all of the gross receipts received from such business?

The Court: Objection sustained. That is a question of law. It is not a question that you need any testimony on.

Mr. Bolan: All right.

Q. Mr. Smith, assume that a taxpayer lists on his return two dependents to which he is not entitled, will you please state what effect that has on the taxable income of the taxpayer?

Mr. Feldman: Your Honor, I most certainly——

The Court: I will allow that because that is not a question of law. That is a question of what the mathematical results would be of doing that (807) I will allow that question.

Mr. Feldman: Your Honor, this is hypothetical, and there is no evidence in this case whatever that this taxpayer was not entitled to his six exemptions.

The Court: Well, that I think may be open to question at the present time. I mean, there has been some testimony to the contrary. I will allow the witness to testify what the effect would be from a tax standpoint, dollar and cents standpoint, of claiming additional exemptions.

Mr. Feldman: Well, your Honor, I most respectfully except and point out to the Court that no witness, no expert witness——

The Court: Don't sum up now.

Mr. Feldman: No.

The Court: I have ruled on this.

Mr. Feldman: I am stating my objection so that the record may be clear. That no expert witness can testify or give his opinion as to any matter which is not in evidence in the action before us.

The Court: That is right. But there is an issue here which has been made that the defendant improperly claimed certain exemptions.

(808)

Mr. Feldman: That is not the issue, your Honor.

The Court: What is that?

Mr. Feldman: That is not the issue.

The Court: That is the issue charged in the indictment and in the bill of particulars. And that is one of the issues. Whether it is proved or not is a question which is not before us.

Now the issue as to what affect that would have in evading or defeating taxes is the sole point on which I will allow this question, and that is, when you list your dependents on an income tax return is it merely a matter of information which does not affect your taxes or does it have some effect on defeating the amount of taxes that you have to pay. From that standpoint I will allow the witness to answer the question.

Mr. Feldman: May I be at this time permitted a voir dire to determine whether or not the witness can answer the question?

The Court: No, you can cross-examine him on it. All right.

Mr. Feldman: Exception.

(809)

A. That would decrease the taxable income in the amount of $1200. $600 for each dependent claimed. The result is there would be less tax due if there were a tax due.

Q. Mr. Smith, I show you Government's Exhibit 1, the 1949 income tax return of the defendant, and ask you what is reported on that return as net income for that year?

Mr. Feldman: Your Honor, the return speaks for itself.

The Court: All right. It will be before the jury. But he can give that as a preliminary question.

What is the answer?

A. The net income shown for this return is $3091.25.

Q. Now what does the return show with respect to dependents claimed by Acy Lennon?

Mr. Feldman: The same objection.

The Court: As a preliminary question, I will allow it.

A. It shows six dependents; at $600 apiece would be $3600. That is the total dependents taken.

Q. Now what does the return show is the report (810) of tax due by the defendant for that year? A. None. It shows no tax due.

Q. Now assume that the defendant was not entitled to claim Acy, Junion, and William as dependents for the year 1949, and assume further that in addition to the net income shown on that return the defendant had additional income in the amount of $1300 received from Joseph Ford for services rendered in assisting Mr. Ford in his tax service.

Would there be an additional tax owing beyond that which is reported on the tax return?

Mr. Feldman: Your Honor, there is no evidence in this case that the defendant was not entitled to take six exemptions, nor is there any evidence——

The Court: That is summing up. Do you have an objection to this question?

Mr. Feldman: It is an improper hypothetical, if the witness is being asked a question on an issue which is not in the case.

The Court: There has been evidence in the case on these issues; whether the jury will accept it or not is up to them. But the evidence is certainly in the case that these two dependents were not known (811) to at least his daughter as sons. Now you can put in any defense you want or any argument that you want, but there is sufficient foundation for that hypothetical question to be asked. So I will overrule the objection.

Mr. Feldman: I respectfully except.

Q. Would there be an additional tax due and owing beyond that which is reported on the return? A. There would be a tax due and owing. The return shows none. Under the facts as stated in your question, the tax would be $380.36, so that would be a deficiency of $380.36.

Q. You have computed that deficiency, is that correct? A. I have, yes, sir.

Q. Do you have your computations with you? A. I have.

(Government's Exhibit 23 marked for identification.)

Q. Are those computations reflected in Government's Exhibit 23 for identification? Is the computation of the

tax deficiency which you have just testified to for the year 1949 reflected in Government's Exhibit 23 for identification? A. Yes, sir.

(812)

Q. Well, now, I show you Government's Exhibit 2, the 1950 tax return of Acy Lennon, and ask you to state what that return shows as the net income for the defendant in that year?

Mr. Feldman: Same objection, your Honor.

The Court: Overruled.

Mr. Feldman: Exception.

A. $ 086.20 is the net income shown by this return.

Q. And what does that return show with respect to dependents claimed by the defendant? A. It shows six dependents, amounting to $3600.

Q. And what does that return show as to tax owing by the defendant? A. This return shows no tax owing or due.

Q. Well, now, assume that the taxpayer is not entitled to claim Acy, Jr. and William as dependents, and further assume that in addition to the income reported on that return the taxpayer had an additional income of $1700 received from Mr. Joseph E. Ford for services rendered by the defendant in assisting Mr. Ford in his tax service, would there be an additional tax owing?

Mr. Feldman: Your Honor, same objection. (813) There is no evidence in this case that Acy, Jr. or William were not dependents.

The Court: Overruled.

Mr. Feldman: Exception.

A. There would be an additional tax in the year 1950.

Glen D. Smith—for Government—Direct

Q. And what would the additional tax be? A. $502.20.

Q. And have you computed that tax? A. I have.

Q. And are your computations for that tax reflected in Government's Exhibit 23 for identification? A. They are.

Q. I show you Government's Exhibit 3, the 1951 tax return of the defendant, and ask you what that return shows as net income for the tax payer in that year? A. $3,159.40 is the net income shown by this return.

Q. And what does that return show as the dependants claimed by the defendant? A. It shows six dependents amounting to $3600.

Q. And what does the return show as the amount of tax due and owing? (814) A. The return shows no tax due or owing.

Q. Now, assume that the defendant was not entitled to claim as dependents Acy, Jr. and William during that year, and further assume that in addition to the income reported on that tax return he received an additional income of $1600 from Mr. Joseph E. Ford for services rendered by him to Mr. Ford in Mr. Ford's tax service, would there be an additional tax owing beyond that which is reported in 1951 tax return?

Mr. Feldman: Your Honor, there is no evidence in this case upon which this witness can give an expert opinion in response to a hypothetical question with regard to dependents, or for that matter with regard to the payment to the defendant Lennon of $1600.

The Court: Well, this witness has not testified as to the existence of dependents; he has not testi-

fied as to the payment of additional income. What he is saying is that if that additional income were received by this defendant and if two of the dependents claimed on the return, Acy, Jr. and William, were not dependents then the net result would be that there was more tax owing. That is what he is giving his expert opinion on.

(815)

Mr. Feldman: Your Honor, I do not think that any expert witness can give testimony to a court and jury on evidence which is not in the case.

The Court: Well, there is sufficient evidence in the case on those two issues to allow the witness to give his expert opinion as to what the tax would be based upon that.

Now, whether the proof is sufficient or not is, of course, a question for the jury.

Mr. Feldman: I respectfully except.

The Court: All right. The witness may answer.

A. There is a tax due which is in the amount of $481.32.

Q. And you have made computations reflecting that deficiency, Mr. Smith? A. Yes, I have.

Q. And are those computations reflected in Government's Exhibit 23 for identification? A. They are.

Q. I show you Government's Exhibit 4, the 1952 tax return of Acy and Beatrice Lennon, and ask you what that return shows as the net income of the taxpayers? A. $2,657.63 is the net income shown by this re- (816) turn.

Q. And what does that return show as to dependents claimed by the taxpayer? A. This return shows six dependents amounting to $3600.

Q. And what does that return show as to the amount of tax due and owing? A. This return shows no tax due or owing for 1952.

Q. Now, assume that the defendant was not entitled to claim as dependents during that year Acy, Jr. and William, and further assume that in addition to the income reported on that return the defendant had an additional income of $1500, received by him for services rendered in selling Dorie Miller apartments, would there be an additional tax due and owing?

Mr. Feldman: Your Honor, we now amplify the objection, because we now have the TPA commissions, and I say there is no evidence in this case that connects this defendant with receiving $1500 in income, and that, of course, objection is made with the other arguments that I made with regard to the other questions that have been asked.

The Court: I overrule the objection, but (817) I want to ask the witness a question after he answers this. Go ahead and answer the question.

Mr. Feldman: Exception, your Honor.

A. There will be a tax due and the amount is $390.19, and that covers the deficiency in tax for the year 1952.

Q. And have you made computations which arrive at that deficiency? A. I have, sir.

Q. And are those computations reflected in Government's Exhibit 23 for identification? A. They are.

The Court: Let me ask you, sir, if in that particular year, which is 1952, I believe, you eliminated this $1500 commission on sales of apartments, but still kept the hypothetical situation that the de-

fendant had claimed two additional dependents that he was not entitled to claim, would there have been any tax due?

The Witness: It will take me a minute, your Honor.

The Court: It should not take longer than that.

The Witness: No.

The Court: All right.

(818)

The Witness: There would be a tax due, and do you want the amount, sir?

The Court: Approximately, yes.

The Witness: Approximately $50.

The Court: Approximately $50 would have been due in that event?

The Witness: Yes.

The Court: All right.

The Witness: I beg your pardon, I computed that too hastily.

The Court: All right, give it again.

The Witness: I would like to compute that again and change it.

The Court: It would be about $32, wouldn't it?

The Witness: I get approximately $31.

The Court: $31.

The Witness: Yes.

The Court: All right.

(905)

Mr. Bolan: The Government recalls Mr. Paul Klein as the next witness.

PAUL KLEIN, recalled as a witness on behalf of the Government, having been previously sworn, testified further as follows:

Direct examination by Mr. Bolan:

Q. Mr. Klein, has your recollection been refreshed in any way as to the subject matter of your previous (906) testimony? A. No, sir, I don't recall anything about what we talked of.

Q. I would like to go back on a point that I don't think I covered fully previously:

You stated that prior to your appearance in the Treasury Department and before the grand jury that when you got a call to come down you called the defendant Lennon, is that correct? A. Either Lennon or Mr. Hampton.

Q. In any event, you did see the defendant Lennon with Mr. Hampton after that? A. Yes, sir.

Q. Well, now, will you state exactly what was said by—first, was there anyone else present? A. I don't think——

Mr. Feldman: Your Honor, I submit that this has all been gone over when Mr. Klein was originally on the stand, and I think recalling him for such purpose is highly prejudicial.

The Court: Let me just say that we are not going to have this whole thing gone over once again, but just to see what we are getting to, what is the next question, Mr. Bolan?

(907)

Mr. Bolan: All right.

Q. State exactly what was said by the defendant, by

Mr. Hampton and yourself at that meeting. A. I don't know if I can state it exactly.

Q. Well, as far as you can recall, and when was this, sir, before you go any further? A. I think you mentioned the date that I was——

Q. Well, you signed the Treasury statement in May, 1955. A. In May?

Q. Yes. A. Well, if it was very early in May, then it might have been late April. It was following the phone call from the Treasury Department.

Q. Will you proceed? A. And subject to one other confusion or lack of memory on my part, I don't know that I can give verbatim a particular statement of a particular individual, but it was either the statement of the defendant or the other gentleman.

Q. Yes.

Mr. Feldman: Your Honor, in the light of that and in view of what has developed at this trial up to this point how can any testimony by this witness be binding upon the defendant?

(908)

The Court: The witness said that he talked to the two of them together, and Lennon was present with Hampton.

What in substance was said? That is what Mr. Bolan's question is.

Mr. Bolan: Yes, sir.

The Court: All right. What was said?

The Witness: In general terms, Mr. Bulson, if that is his name, the gentleman from the Revenue Department, said he wanted to talk to me. I don't know exactly what he said, something to the effect

of a check relating to Mr. Lennon and Mr. Hampton, or one of them, I don't know.

So I said I would be glad to see him.

Well, I called one of them, or both of them, and I said, "What is this all about?"

They said, "Well, come on up."

Mr. Feldman: Your Honor, this is highly equivocal testimony, "I called one of them or both of them."

The Court: He said he called one of them or both of them and they said, "Well, come on up."

Mr. Feldman: Yes.

The Court: Now, did you talk to both of them (909) together?

The Witness: Yes.

The Court: All right. What was said at that time?

The Witness: The effect was, "Do you remember in '52 when you borrowed a sum of money from me or from us?" whichever one was talking.

"No, I didn't" was my answer.

They reminded me about the Congressman's heart attack, and that I had been out at Westhampton, and I remembered the situation about the turmoil of the occasion, both my own personal episodes at the time, and the general hectiqness of the time.

One or the other of them said, "Well, that was the time when you needed the money and you asked the Congressman for it."

I said, "It surprises me. You remember it exactly," but I certainly was not surprised.

And he said, "Who told you to see us or me?"

And one of them was saying this, "And we came up and we lent you $3,000."

As they spoke about it, I thought about it. I began to see if I remembered it.

Q. Well, just state what you recall as to what (910) was said. A. Well, that was the conversation at that time, and I asked a few questions to try to refresh my memory, and as they answered them I became satisfied in my mind——

Q. State what you recall what you said to them. A. That is about it. I can't remember the exact questions I asked, but they were ones to try to sharpen my own memory of the situation that they were attempting to recall to me.

And by the end of the conversation they had satisfied me that this had occurred, and I thought I remembered it as such.

Q. Well, now, you appeared in my office in March of this year, is that right? A. I don't know the date.

Q. Yes? A. But I did appear, yes, sir.

Q. Yes. And you told me substantially what you have just said now as to what took place at that meeting? A. I think so, yes.

Q. And did you also tell me that you had no recollection personally as to whether the incident that the defendant and Hampton told you about had occurred?

Mr. Feldman: Your Honor, I am going to object. (911) How is this binding on the defendant, a conversation between this witness and Mr. Bolan?

The Court: Sustained.

Mr. Bolan: Your Honor, I am trying to refresh the witness's recollection.

The Court: You tried for a long time to refresh this witness's recollection.

Mr. Bolan: Yes.

The Court: See if there is something new.

Mr. Bolan: All right.

Q. Did I suggest to you the method whereby——

Mr. Feldman: Your Honor——

A. ——you might refresh your recollection?

Mr. Feldman: ——this is highly improper.

The Court: Well, I sustain the objection.

Q. Have you done anything to refresh your recollection since that meeting with me in my office? A. Yes, sir.

Q. What did you do? A. You suggested that I speak to Congressman Powell——

Mr. Feldman: Your Honor, I object. How is this binding on the defendant?

The Court: I will allow that.

(912)

You say you talked to Congressman Powell?

The Witness: Yes.

The Court: When did you talk to him?

The Witness: Soon after the conversation with Mr. Bolan.

The Court: And when was that?

The Witness: As a rough guess, if I saw Mr. Bolan in mid-March, it was by the end of March.

as soon as I could get him between his Washington schedule.

The Court: You talked to Congressman Powell, all right.

The Witness: Yes.

By Mr. Bolan:

Q. And what transpired?

Mr. Feldman: Well, your Honor, I am certainly going to object to any conversation between the witness and the Congressman as having no effect or not being binding on my client.

The Court: Well, this is rebuttal. The Congressman testified yesterday.

Mr. Feldman: The Congressman testified not as my witness but he was a Government witness.

The Court: Maybe so, but let us get the facts.

Mr. Feldman: Your Honor, I will certainly ob-
(913) ject to any conversation being placed on the record between this witness and the Congressman. This is pure and unadulterated hearsay.

The Court: Well, I don't know that it is hearsay: it is a question of what actually happened, and anything that this witness knows about it, why, I think we should have.

Mr. Feldman: If two people decide to play hop scotch in Central Park, it does not mean that it is binding on my client.

The Court: No, it does not in any manner. However, I will allow you to ask whether there was any conversation with the Congressman or whether that

conversation with the Congressman refreshed the witness's recollection.

Did it?

The Witness: No, sir.

The Court: It did not?

The Witness: Well, it increased my feeling about what my recollections were, but it did not add to them.

The Court: It confirmed your previous recollection?

The Witness: No. On the newer recollection.

(914)

The Court: Your newer recollection?

The Witness: Yes. He said he knew nothing about it.

Q. The Congressman stated he knew nothing about it? A. Yes, sir. He said he couldn't remember——

Mr. Feldman: Your Honor, I am going to object and ask that this be stricken.

The Court: Oh, I will allow that. That does not make any difference.

Mr. Feldman: Exception, your Honor.

Q. And nothing since that time has refreshed your recollection in any way, is that right? A. Yes.

Q. And that discussion with the Congressman reaffirmed your present feeling that you do not recall anything about the incident, is that right? A. Yes, sir, that is right.

Mr. Bolan: No further questions.

Mr. Feldman: Your Honor, I object and ask that the witness's answers be stricken.

The Court: No, I will deny that motion.

Any cross examination?

Mr. Feldman: No cross examination, your Honor.

The Court: You are excused.

* * * *

October 16, 1956

(991) * * *

CLYDE NOEL, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Feldman:

Q. Mr. Noel, where do you reside? A. 409 West ~~129th~~ Street, New York City.

Q. And by profession, what profession do you practice? A. Accounting.

Q. And how long have you been an accountant, Mr. Noel? A. Since 1950.

Q. And by whom are you employed now? A. New York City Comptroller's Office.

Q. And in what capacity are you so employed? A. As an accountant.

Q. Now, Mr. Noel, do you know the defendant, Mr. Lennon? A. I do.

Q. And did you during the course of your career ever work for Mr. Lennon? (992) A. I have.

Q. And in what year did you work for Mr. Lennon?

A. I think it was '52, '53, '54, something like that. It was three years.

Q. '52, '53 and '54? A. I believe those were the years.

Q. And in what capacity did you work for Mr. Lennon? A. As an accountant, I guess you would call it. I was filling out income tax returns.

Q. Was that at Mr. Lennon's tax service? A. Yes.

(998) * * * * *

Cross examination by Mr. Bolan:

Q. Mr. Noel, you were a full time employee at this tax service? A. Part of the time.

Q. Well, about how much of the time? I say full time, when you worked at the tax service, were you there as a full time employee of the tax service? A. No, I was free to come and go as I chose. If I had business of my own to take care of, I would leave.

Q. Yes. But during the time that you did work for Mr. Lennon, how frequently did you leave? A. Well, say at the beginning of the season, the tax season, business was slow, I might come in, work three and three-quarter hours, four and three-quarter hours, five hours, five and a half, four and a half. Later on I got eight and a half hours, ten and a half, eleven hours, eleven and a half hours, like that.

(1000) * * * * *

Q. Now, while you were working for Mr. Lennon did you ever prepare any of his tax returns? A. I prepared one of his tax returns. I believe it was 1953 tax return.

Q. Well, I show you Government's Exhibit 4 and ask you if this is the tax return you prepared for Mr. Lennon? A. Yes, that is the one.

The Court: What is the answer?

The Witness: Yes, that is the one.

Q. Now, with respect to all of the items on that return, are they written in by you?

Mr. Feldman: Your Honor, I presume that Mr. Bolan is making the witness his own——

Mr. Bolan: Yes.

Mr. Feldman: Since this is not a subject of direct examination.

(1001)

The Court: I guess so. All right.

What is the answer? Did you write all those items in?

The Witness: Well, there's several pages here, your Honor, and I have to look them all through.

Q. Look through the entire thing. A. Well, on page 2 here, the figures are my handwriting, but the writing above, "Sources"——

The Court: We can't hear you.

A. On page 2, the item says "Other sources, state nature of income." The writing—the numbers are in my handwriting, but the writing which says "commissions, publications, etc.," that is not my handwriting.

The Court: How much was the item?

Mr. Feldman: What year was this, your Honor?

The Court: 1953.

The Witness: '52.

The Court: 1952?

Mr. Bolan: 1952 return.

A. The amount states $1,280.

Mr. Feldman: Which page is this? I am sorry.

The Witness: Page 2.

Mr. Feldman: Your Honor, it is there in the (1002) return, but there is no issue about the item in the case.

The Court: All right. I know. Go ahead.

What other items did you fill in?

The Witness: Well, Schedule C seems to be made out in my handwriting. Computation of self-employment tax, page 3, Schedule C, is not mine. The heading is mine, Acy and Beatrice Lennon, candy store, that is my writing, but the figures are not mine.

"Church dues and building fund" on page 3 of the 1040, that might be—that $450 church dues, that might be mine, and again it might not; I am not sure. But the rest of the figures are mine on that page.

Q. And that is your signature on the first page as being the person who prepared the return, is that right? A. That is right.

Q. Well, now, how did you prepare this return? Did Mr. Lennon ask you to prepare it? A. Well, I believe I can, not remembering exactly, but I believe he did ask

me, because I would not prepare it without him asking me to.

Q. You knew at the time Mr. Lennon was running (1003) the tax service, is that right? A. That is right.

Q. And you knew he had income from the tax service, is that right? A. Well, yes, I guess so.

Q. Well, now, which item of the return refers to the income from the tax service?

Mr. Feldman: Your Honor, I am going to object. There is no issue in this case that in 1952 there is unreported income from the tax service.

The Court: I will allow the witness to answer that question.

A. When I looked at it before, I didn't see any place on the return where there would be income from the tax service unless it was in, you know, that would be it (indicating), unless it might be under "Commissions, Publications."

Q. Unless it might be under "Commissions and Publications"? A. And publications, that might be the item.

Q. Those words, "Commissions and Publications" are not in your handwriting, is that right? A. That is right.

Q. Is the figure in your handwriting? (1004) A. The figures is in my handwriting.

Q. What did you do with the return after you completed it? A. Well, I gave it to Mr. Lennon.

Q. There is an erasure where it says "Commissions and Publications," is that right, sir? A. That is right.

Q. And was that erasure on it when you gave it to Mr. Lennon? A. As far as I can remember, I don't think it was.

Q. Now, you as an accountant knew of course that with respect to a tax service a Schedule C would have to be filed, is that right? A. That is right.

Q. Do you have any recollection of discussing with Mr. Lennon whether Schedule C should be filed with this return? A. No.

Q. Do you have any knowledge at all on the subject as to why a Schedule C was not filed with the return? A. No, I can't remember why it wasn't. Well, more or less, I would imagine that——

Mr. Feldman: Your Honor, may we not have any speculation, if the witness starts the answer, "I ima- (4005) gine"?

The Court: If the witness can answer, he can say whether he had any discussion.

Did you have any discussion about Schedule C with the taxpayer?

The Witness: Well, your Honor, this happened in 1952, and since 1952 I have prepared a lot of returns, and one return in 1952 I don't remember.

The Court: You don't remember. All right.

The Witness: And, like I said, I might have prepared it, I believe I prepared that from a questionnaire or I might have prepared it from some book that Mr. Lennon had given me. But exactly how I prepared it or the information that—the computations I examined to prepare it——

Q. Did Mr. Lennon ever show you any books showing his receipts from the tax service? A. No.

Q. He never did? A. No.

Q. You as an accountant normally would have such

books in preparing a return, is that right? A. That is right.

Q. But Mr. Lennon never did show you such books? (1006) A. No, he did not.

The Court: Let me see that return.

(Mr. Bolan hands to the Court.)

* * * * *

(1014) * * *

Re-cross examination by Mr. Bolan:

Q. Mr. Noel, while working for Mr. Lennon, do you know whether or not he did keep a record of his receipts? A. Well, as far as I know, he had some type of record of his receipts.

Q. And did he show you that record of his receipts when it came time to prepare the tax return? A. No.

Q. Was there any reason why you didn't ask him? A. Because I worked for—the year I filled out that return was for the prior year, and I didn't know if (1015) he had any records previous to that or not.

Q. You recall you were in my office a few days ago? A. Yes.

Q. And you recall Mr. Emanuel was there with me? A. Yes.

Q. Do you recall giving a different answer as to why you didn't ask Mr. Lennon for the tax receipts?

Mr. Feldman: Your Honor, I must point out to the Court at this point that the witness is both my own and Mr. Bolan's at this point.

The Court: I will overrule the objection. I

will allow the witness to answer whether he gave a different answer a few days ago.

Mr. Feldman: Exception.

A. Well, I gave a different answer?

Q. Yes. Do you recall that? A. Well, the answer that I probably gave you was that I was working for Mr. Lennon, and when you work for a person, you more or less, when you are working for them, you do what they say.

Q. Yes, that is right. You do recall telling me that? A. Yes, sir.

(1016)

Q. Well, now, with respect to—where is the return? A. I gave it back to you, I believe.

Q. With respect to the dependents listed there, did Mr. Lennon tell you that those dependents, the children, that is, the four children there, lived with him? A. I believe so.

The Court: Are you through, Mr. Bolan?

Mr. Bolan: I am through.

The Court: All right.

Mr. Feldman: Can I have the return, please?

(Mr. Bolan hands to Mr. Feldman.)

Redirect examination by Mr. Feldman:

Q. Do you have any direct recollection that Mr. Lennon told you in 1952 that the children lived with him? A. Direct recollection?

Q. Yes. Do you recall that? A. Well, let me go back

a little bit and try to get this straightened out. I said that I believe——

Q. I will withdraw the question. Let me ask you, did you have a copy of the 1951 tax return before you at the time that you did this tax return? A. I don't remember. I believe—I told you I believe I got the information either from a question- (1017) naire or some papers that were there, and that is the way I put the information down.

Q. So that you don't have actually, Mr. Noel, any precise recollection of any conversation with Mr. Lennon as to where those children lived? A. Well, it is hard to—1952 is hard to remember whether he said this, I said that, or who said this and who said that.

Q. I understand that. A. And you are trying to make me say yes or no and Mr. Lennon told me that he didn't live——

Q. No. A. I cannot say that, so that the end of it.

Q. That is exactly the point. I am not trying to get you——

The Court: Ask him a question.

Q. I am trying to determine now, Mr. Noel——

Mr. Bolan: I object as to what counsel is trying to do.

The Court: Yes. Just ask the question and the witness can answer the question. If you ask him questions, he will answer them.

Q. When you answered Mr. Bolan's question as to whether Mr. Lennon told you that the children lived (1018) with him, you said that Mr. Lennon had: A. Well, what I meant by that, that according to the return the children lived with Mr. Lennon, and I put down in the spot four children who lived with their parents.

Q. That is right.

The Court: If the children weren't living with Mr. Lennon, then you would have to put the address of the children on the return.

The Witness: On the return or somewheres.

Q. But you don't recall now whether you had any conversation with Mr. Lennon on that subject or not, is that right, sir? A. That is right.

Q. Is that right? A. I don't recall having any conversation with Mr. Lennon on where his children lived, whether it was his children. I believe it was either he gave them to me, probably, or——

Q. Or you took it off from some other records? A. And I put it down.

Q. And if it appeared that way in the other record, 1951 tax return, you would have copied——

The Court: He says he doesn't recall that. (1019) He said he got it either from Mr. Lennon or some piece of paper. That is what he says.

Mr. Feldman: I have no further questions.

Recross examination by Mr. Bolan:

Q. Now, you say you either put it down because Mr. Lennon told you or because of some record?

Mr. Feldman: Your Honor, I am going to object now.

The Court: To what?

Mr. Feldman: To this repetition.

The Court: You haven't heard the question yet.

Mr. Feldman: No, no.

The Court: All right. Let us have the question. I can't rule on objections until I see the ball coming over the plate, and then I can tell whether it is a ball or a strike. Now, let the question be asked.

(1020)

Q. Well, the question is this: you say you either talked to Mr. Lennon or he told you to put that down, or you put it down from some record? A. Yes.

Q. Now, this record that you speak of, is that a record that Mr. Lennon gave you and that you prepared the return from? A. Yes.

Mr. Bolan: That is all.

By Mr. Feldman:

Q. You don't know the nature of the record, is that right? A. I don't remember the nature of the record.

Mr. Feldman: I have no further questions.

The Court: You are excused.

(Witness excused.)

Government's Exhibit 1

1949 Income Tax return.

(OFFSETS)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Note

Page 161a (3 sheets)
is on Card 7.

Government's Exhibit 2

1950 Income Tax return.

(OFFSETS)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Note

Page 163a (5 sheets)
is on Card 7

Government's Exhibit 3

1951 Income Tax return.

(OFFSETS)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Note

Page 165a (4 sheets)
is on Cards 7 and 8.

Government's Exhibit 4

1952 Income Tax return.

(OFFSETS).

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Note

Page 167a (6 sheets)
is on Card 8.

Government's Exhibit 14

Two affidavits of Paul L. Klein.

(OFFSETS)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Note

Page 169a (2 sheets)
is on Card 8.

Government's Exhibit 16

Certification charge.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

This memo of charge represents a certified check or note which was outstanding at the time your s
was prepared. When paid, the original check or note will be returned to you.

Dated 7/17/5x Check N

CORN EXCHANGE BANK TRUST

BRANCH

CERTIFICATION CHARGE

Cert. No

Jermain Protective Accs. Co.

For (Check) (Note) Certified this day to the

Order of Paul Klein

This memo of charge represents a certified check or note which was outstanding at the time your
was prepared. When paid, the original check or note will be returned to you.

Dated July 15 5x Check

which was outstanding at the time your stat
ll be returned to you.

Check No. 1110

GE BANK TRUST CO.

BRANCH

Cert. No. 5502

July 12 19 5x

Protective Accs. Co.

to the

PAID

$1000 —

which was outstanding at the time your statement
ll be returned to you.

Check No 69

PAID

Government's Exhibit 16

(Page 17a)

Government's Exhibit 1

(16la - 1)

FORM 1040
U.S. Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

For calendar year 1949 or fiscal year beginning ///, 1949, and ending ///, 1950

1949

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than $5,000, consisting wholly of wages shown on Forms W-2, or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

File Code

Serial No. 3112254

(Cashier's Stamp)

Name Acy LENNON
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 127 W. 138 St.
(PLEASE PRINT. Street and number or rural route)

New York (City, town, or post office) 30 (Postal zone number) N.Y. (State)

Social Security No. 117-03-3081 Occupation Sec'y

Your exemptions

1. **List your own name.**
If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in Instructions) with 1949 incomes of less than $500 who received more than one-half of their support from you in 1949. If this is a joint return of husband and wife, list dependent relatives of both.

Name (please print)	Check below whether you (or your wife) were at the end of your taxable year— 65 OR OVER	BLIND	On lines a and b below— Write 1 if neither 65 nor blind; Write 2 if either 65 or blind; Write 3 if both 65 and blind.
Your name Acy	Yes ☐ No ☑	Yes ☐ No ☑	a. Number of exemptions for you 1
Wife's (or husband's) name Beatrice	Yes ☐ No ☑	Yes ☐ No ☑	b. Number of her (his) exemptions 1

Name of Other Dependent Relative	Relationship	Address—If different from yours
Barbara	Daughter	
Della	Daughter	
Acy, Jr.	Son	
William	Son	

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 6

Your Income

2. **Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1949, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Persons claiming traveling or reimbursed expenses, see Instructions.**

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
U.S. House of Representatives	D.H., N.Y.	$ 116 80	$ 3455 02
Citizens Coffee	N.Y., N.Y.	9 —	280 —
Calvary Presbyterian Church	N.Y., N.Y.	12 —	2100 —
	Enter totals	$ 137 80	$ 5835 02

3. Enter here the total amount of your dividends ____
4. Enter here the total amount of your interest (including interest credited on savings accounts; also interest from Government obligations unless wholly exempt from taxation) ____ 1315 77
5. If you received any other income, give details on page 2 and enter the total here ____
6. Add income shown in items 2, 3, 4, and 5, and enter the total here ____ $ 4619 25

How to figure the tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the table on page 4. This table allows about 10 percent of your total income for charitable contributions, interest, taxes, medical expenses, etc. If such deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF INCOME WAS $5,000 OR MORE.—Do not use tax table. Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

HUSBAND AND WIFE.—For split-income benefits, file a joint return. If filing separate returns, and one itemizes deductions, both must itemize.

Tax due or refund

7. Enter your tax from table on page 4, or from line 18, page 3 ____ $ None
8. How much have you paid on your 1949 income tax?
   (A) By tax withheld (in item 2, above). Attach Original Forms W-2 ____ $ 137 80
   (B) By payments on 1949 Declaration of Estimated Tax ____
   Enter total here → 137 80
9. If your tax (item 7) is larger than payments (item 8), enter **BALANCE OF TAX DUE** here ____ $ ____
   This balance of tax due must be paid in full with return
10. If your payments (item 8) are larger than your tax (item 7), enter the **OVERPAYMENT** here ____ $ 137 80
    Check (✓) whether you want this overpayment: Refunded to you ☑; or Credited on your 1950 estimated tax ☐
    Do you owe any prior year Federal tax for which you have been billed? ____ (Yes or No)

If you filed a return for a prior year, state latest year 1948
Where filed New York
To which Collector's office did you pay amount claimed in item 8 (B), above? 2nd N.Y.

County in which you reside New York
Is your wife (or husband) making a separate return for 1949? No (Yes or No)
If "Yes," write her (or his) name ____

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Edmund J. Collins 3/14/50
(Signature of person, other than taxpayer, preparing this return) (Date)

(Name of firm or employer, if any)

Acy Lennon 3/14
(Signature of taxpayer) (Date)

(Signature of taxpayer's wife or husband if this is a joint return) (Date)

To assure any benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has income.

(P. 169 a - 2)

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	$		4. Total amount received this year	$	
2. Amount received tax-free in prior years			5. Excess, if any, of line 4 over line 3		
3. Remainder of cost (line 1 less line 2)	$		6. Enter line 5, or 3 percent of line 1, whichever is greater (but do not enter more than line 4)		$

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (itemize in Schedule G)
	$	$	$	$
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$	$	$	$

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of business Stationary Store; (2) business name Tinys;
(3) business address 2270 - 1st Ave N.Y.C.

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts — $25901 44

COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)	
2. Inventory at beginning of year	$ 500 —
3. Merchandise bought for sale	23537 56
4. Labor	
5. Material and supplies	
6. Other costs (explain in Schedule G)	
7. Total of lines 2 to 6	$ 24037 56
8. Less inventory at end of year	825 —
9. Net cost of goods sold (line 7 less line 8)	$ 23212 56
10. Gross profit (line 1 less line 9)	$ 2738 85

OTHER BUSINESS DEDUCTIONS	
11. Salaries and wages not in line 4	$ 2846 67
12. Rent	900 —
13. Interest on business indebtedness	
14. Taxes on business and business property	4 —
15. Losses (explain in Schedule G)	
16. Bad debts arising from sales or services	
17. Depreciation, obsolescence, and depletion (explain in Schedule F)	
18. Repairs	91 45
19. Other expenses (explain in Schedule G)	480 21
20. Net operating loss deduction (attach statement)	
21. Total of lines 11 to 20	$ 4322 33
22. Total of lines 9 and 21	$ 27,484 89
23. Net profit (or loss) (line 1 less line 22)	— 1583 48

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

	NAME	ADDRESS	AMOUNT
1. Partnership, syndicate, etc.			$
2. Estate or trust			
3. Other sources (state nature)	Telephone Commission		367 71
		Enter total here →	367 71

Total income (or loss) from above sources (Enter as item 5, page 1) — 1215 77

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accounting depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 15, AND 19 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
19	Gas & Electric	$ 264 80			$
	Acct Fee	120 —			
	Insurance	28 60			
	Contributions	9 70			
	Miscellaneous	57 85			

(p. 16la -3)

ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW—
If husband and wife (not legally separated) file separate returns and one itemizes deductions, the other must also itemize

	Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.		Amount
Contributions	Church & Charities	$ 40 95 ✓	
	Other Charitable Organizations		
	Allowable Contributions (not in excess of 15 percent of item 6, page 1)		$ 475 ✓
Interest	A.B. Credit Union	$ 48 ✓	
	132 - West 13th St.		
	Total Interest		48 ✓
Taxes	Sales & Sundry taxes	$ 25 ✓	
	Total Taxes		25 ✓
Losses from fire, storm, or other casualty, or theft		$	
	Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses		$	
	Net Expenses (not compensated by insurance or otherwise)	$	
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses		1 / 1
	Allowable Medical and Dental Expenses. See Instructions for limitation		
Miscellaneous (See Instructions)	Expenses away from home — Sec. 162 (a) (2) 70¢ per day while on Congressional business	$ 980 ✓	
	Total Miscellaneous Deductions		980 ✓
	TOTAL DEDUCTIONS		$ 1528 ✓

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	$ 4619	25 ✓
2. Enter DEDUCTIONS. If deductions are itemized above, enter the total of such deductions. If adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of 10 percent of line 1, above, or $1,000, whichever is the lesser, or $500 if this is the separate return of a married person	1528	✓
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 3091	25 ✓
4. Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here	3600	✓
5. Subtract line 4 from line 3. Enter difference here	$ None	✓
Lines 6, 7, and 8 should be filled in ONLY by a single person or a married person making a separate return		
6. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 5 (if line 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	$	
7. If line 6 is (a) not over $400, enter 17% of amount on line 6 (b) over $400 but not over $100,000, enter $68 plus 12% of the excess over $400 (c) over $100,000, enter $12,020 plus 9.75% of the excess over $100,000		
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax	$	
Lines 9 to 13 should be filled in ONLY if this is a joint return of husband and wife		
9. Enter here one-half of amount on line 5, above	$	
10. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 9 (if line 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	$	
11. If line 10 is (a) not over $400, enter 17% of amount on line 10 (b) over $400 but not over $100,000, enter $68 plus 12% of the excess over $400 (c) over $100,000, enter $12,020 plus 9.75% of the excess over $100,000		
12. Subtract line 11 from line 10. Enter the difference here	$	
13. Multiply amount on line 12 by 2. Enter this tax here. This is your combined normal tax and surtax	$	
14. If alternative tax computation is made on separate Schedule D, enter here tax from line 12 on back of Schedule D	$	
If you used the standard deduction in line 2, disregard lines 15, 16, and 17, and copy on line 18 the same figure you entered on line 8, 13, or 14, whichever is applicable		
15. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$	
16. Enter here any income tax paid at source on tax-free covenant bond interest		
17. Add the figures on lines 15 and 16 and enter the total here	$	
18. Subtract line 17 from line 8, 13, or 14, whichever is applicable. Enter difference here and in item 7, page 1. This is your tax	$ None	

1-3 ✓

Government's Exhibit 2

(p. 1630-P)

FORM 1040
U.S. Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

1950
CALENDAR YEAR

For other taxable years ending after Sept. 30, 1950, but before Dec. 31, 1951, attach Form 1040FY

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than $5,000, consisting wholly of wages shown on Forms W-2, or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

Serial No. [redacted]3

(Cashier's Stamp)

7102267

FRC 77941

Name Acy Lennon
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 127 West 138 St.
(PLEASE PRINT. Street and number or rural route)

New York 30, N.Y.
(City, town, or post office) (Postal zone number) (State)

Social Security No. 117-03-3081 Occupation Sect. & Boys Dr

Your exemptions

1. List your own name.
If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instructions) with 1950 gross incomes of less than $500 who received more than one-half of their support from you in 1950. If this is a joint return of husband and wife, list dependent relatives of both.

Name (please print)	Check below whether you (or your wife) were at the end of your taxable year— 65 OR OVER	BLIND	On lines a and b below— Write 1 if neither 65 nor blind; Write 2 if either 65 or blind; Write 3 if both 65 and blind.
Your name Acy Lennon	Yes ☐ No ☑	Yes ☐ No ☑	a. Number of exemptions for you 1
Wife's (or husband's) name Beatrice Lennon	Yes ☐ No ☑	Yes ☐ No ☑	b. Number of her (his) exemptions

Name of Other Dependent Relative	Relationship	Address—If different from yours
Barbara Lennon	Daughter	RECEIVED
Della	Daughter	
Acy Jr.	Son	JUN 13 1951
William	Son	COLL. INT. REV. 3rd DIST. N.Y.

1-6

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 6

Your income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1950, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of Armed Forces and persons claiming traveling or reimbursed expenses, see Instructions.

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
House of Representatives	N.Y.C.	$ 207 —	$ 4016 64
St. Aloysius Church	N.Y.C.	13 20	2100 —
Enter totals		$ 220 20	$ 6116 64

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here 1029 44

4. Add income shown in items 2 and 3, and enter the total here $ 3087 20

How to figure the tax

IF YOUR INCOME WAS LESS THAN $5,000.—Use the table on page 4 to find your tax—unless you itemize your deductions. This table allows about 10 percent of your total income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF INCOME WAS $5,000 OR MORE.—Do not use tax table. Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

HUSBAND AND WIFE.—For split-income benefits, file a joint return. If filing separate returns, and one itemizes deductions, both must itemize.

Tax due or refund

5. Enter your tax from table on page 4, or from line 18, page 3 $ None

6. How much have you paid on your 1950 income tax?
(A) By tax withheld (in item 2, above). Attach Original Forms W-2 $ 220 20
(B) By payments on 1950 Declaration of Estimated Tax
Enter total here → 220 20

7. If your tax (item 5) is larger than payments (item 6), enter BALANCE OF TAX DUE here $
This balance of tax due must be paid in full with return.

8. If your payments (item 6) are larger than your tax (item 5), enter the OVERPAYMENT here $ 220 20
Enter amount of item 8 you want: Refunded to you $ 220 20; Credited on your 1951 estimated tax $
Do you owe any prior year Federal tax for which you have been billed? No
(Yes or No)

If you filed a return for a prior year, state latest year 1946
Where filed 3rd District N.Y.C.
To which Collector's office did you pay amount claimed in item 6 (B), above? 3rd Dist.

County in which you reside N.Y.
Is your wife (or husband) making a separate return for 1950? No
(Yes or No)
If "Yes," write her (or his) name

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person, other than taxpayer, preparing this return) (Date)

(Name of firm or employer, if any)

Acy Lennon 6/14/51
(Signature of taxpayer) (Date)

(Signature of taxpayer's wife or husband if this is a joint return) (Date)

To assure any benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has income.

16—63581-1

(p. 163a - 2)

Schedule A.—INCOME FROM DIVIDENDS

Name and address of corporation declaring dividend	Amount		Name and address of corporation declaring dividend	Amount	
	$			$	
			Enter total here →	$	

Schedule B.—INCOME FROM INTEREST

Name and address of payer	Amount		Name and address of payer	Amount	
	$			$	
			Enter total here →		

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

Net profit (or loss) from business or profession (from separate Schedule C) Loss 1331 44

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)

Schedule E.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	$		4. Total amount received this year	$	
2. Amount received tax-free in prior years			5. Excess, if any, of line 4 over line 3		
3. Remainder of cost (line 1 less line 2)	$		6. Enter line 5, or 3 percent of line 1, whichever is greater (but do not enter more than line 4)		

Schedule F.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule H)	4. Repairs (explain in Schedule I)	5. Other expenses (itemize in Schedule I)
	$	$	$	$
1. Totals	$	$	$	$

2. Net profit (or loss) (column 2 less sum of columns 3, 4, and 5)

Schedule G.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

	NAME	ADDRESS	AMOUNT
1. Partnership, ~~joint venture~~, etc.	Concessions	Telephone	$ 132 —
2. Estate or trust			
3. Other sources (state nature)	Rebate from Tree Crews		160
		Enter total here →	292 —

Total income (or loss) from above sources (Enter as item 3, page 1) $ 1029 44

Schedule H.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE F

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

Schedule I.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE F

1. Column No.	2. Explanation	3. Amount	1. Column No.	2. Explanation	3. Amount
		$			$

(p. 163 ?)

INTERNAL REVENUE SERVICE
THIRD DISTRICT OF NEW YORK

U. S. TREASURY DEPARTMENT

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE
110 EAST 45TH STREET
NEW YORK 17, N. Y.

IN REPLYING REFER TO: IT:AC

March 16, 1951

RECEIVED
13 JUN 13 1951
COLL. INT. REV.
3rd DIST. N.Y.

ACY L. Lennev
2276 Seventh Ave
NYC

FORM 1040

In response to your request, there is hereby granted an extension of time to June 15, 1951 for the filing of your income tax return for the year ended December 31, 1950. However, the return may be filed on or before the extended date.

Interest at the rate of 6% per annum is collectible.

Unless this letter is attached to your return when filed, a penalty for delinquency will be assessed.

James W Johnson ?

JAMES W. JOHNSON
Collector

Acy Lennon- 127 West 138 Street, N.Y.C.

Deductions:-
Line 15—Robbery

Explanation:-

April 1st, and April 28th, 1951—Reported to 32nd precinct
at west 135 Street, N.Y.C.
Detective Huey assigned to the case

2-3

SCHEDULE C (File with Form 1040)
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

1950

SCHEDULE OF PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Farmers should obtain Form 1040F)

For Calendar Year 1950 or other taxable years ending after Sept. 30, 1950, but before Dec. 31, 1951

NAME AND ADDRESS Alex Lennon

State (1) nature of business Stationery Store
(2) business name
(3) business address 2304 - 7th Ave

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with your business or profession

1. Total receipts from business or profession		$13,500 —
COST OF GOODS SOLD		
2. Inventory at beginning of year	$ 437 50	
3. Merchandise bought for manufacture or sale	13235 50	
4. Cost of labor	130 —	
5. Material and supplies	473 —	
6. Other costs (explain in Schedule C–2)	—	
7. Total of lines 2 to 6	$ 14276 —	
8. Less inventory at end of year	725 —	
9. Net cost of goods sold (line 7 less line 8)		13551 —
10. Gross profit (line 1 less line 9)		$ 1949 —
OTHER BUSINESS DEDUCTIONS		
11. Salaries and wages not included in line 4	$ 1810 —	
12. Rent on business property	495 —	
13. Interest on business indebtedness	—	
14. Taxes on business and business property	—	
15. Losses of business property (attach statement)	300 —	
16. Bad debts arising from sales or services	—	
17. Depreciation and obsolescence (explain in Schedule C–1)	50 —	
18. Repairs (explain in Schedule C–2)	106 —	
19. Depletion of mines, oil and gas wells, timber, etc. (submit schedule)	—	
20. Amortization of emergency facilities (attach statement)	—	
21. Other business expenses (explain in Schedule C–2)	309 44	
22. Total of lines 11 to 21		3270 44
23. Net profit (or loss) before net operating loss deduction (line 10 less line 22)		$ 1321 44
24. Less net operating loss deduction (attach statement)		—
25. Net profit (or loss). (Enter in Schedule C, page 2, Form 1040)		$ 1321 44

Schedule C–1. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 17

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Display MART	1949	$ 500 —	$ 100 —	$ 0 —	$ 400 —	10	9	$ 50 —
Frigidaire	1950	250 —	50 —	0 —	200 —	5	4	30 —

Schedule C–2. EXPLANATION OF LINES 6, 18, AND 21

1. Line No.	2. Explanation	3. Amount	1. Line No.	2. Explanation	3. Amount
21	Gas & Light	$ 145 —	18	Carpenter - Storeroom	$ 22 50
21	Accountants Fee	100 —	18	Plumbing	65 —
21	Insurance	14 94	18	Misc. Repairs	17 50
21	Fire Insurance	7 —			
21	Alarm System	7 40			
21	Floresence & G.E. Bulbs	15 —			
21	General Expence	25 —			

16—62533-1

2-4

ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW—
If husband and wife (not legally separated) file separate returns and one itemizes deductions, the other must also itemize

	Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.		Amount
Contributions	Abyssinian Church	$ 450 —	
	Misc. Charities	100 —	
	Allowable Contributions (not in excess of 15 percent of item 4, page 1)		$ 550 —
Interest	A.B.C. Fed. Credit Union	$ 21 —	
	Total Interest		21 —
Taxes	N.Y.C. State Taxes & Misc	$ 50 —	
	Total Taxes		50 —
Losses from fire, storm, or other casualty, or theft		$	
			1
	Total Allowable Losses (not compensated by insurance or otherwise)		— 1
Medical and dental expenses		$	
	Net Expenses (not compensated by insurance or otherwise)	$	
	Enter 5 percent of item 4, page 1, and subtract from Net Expenses		
	Allowable Medical and Dental Expenses. See Instructions for limitation		—
Miscellaneous (See Instructions)	Expenses - Traveling to & from Wash D.C. and Living Exp	$	
	Away from home	880	
	Total Miscellaneous Deductions		880 —
	TOTAL DEDUCTIONS		$ 1501

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 4, page 1. This is your Adjusted Gross Income	$ 5082	20
2. Enter DEDUCTIONS. If deductions are itemized above, enter the total of such deductions. If adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of 10 percent of line 1, above, or $1,000, whichever is the lesser, or $500 if this is the separate return of a married person	1501	—
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 3586	20
4. Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here	3600	—
5. Subtract line 4 from line 3. Enter difference here	$	—
Lines 6, 7, and 8 should be filled in ONLY by a single person or a married person making a separate return		
6. Use the tax rates shown on page 16 of Instructions to figure your tentative tax on amount shown in line 5 (if line 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	$	
7. If line 6 is (a) not over $400, enter 13% of amount on line 6 (b) over $400 but not over $100,000, enter $52 plus 9% of the excess over $400 (c) over $100,000, enter $9,016 plus 7.3% of the excess over $100,000		—
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax	$	—
Lines 9 to 13 should be filled in ONLY if this is a joint return of husband and wife		
9. Enter here one-half of amount on line 5, above	$	—
10. Use the tax rates shown on page 16 of Instructions to figure your tentative tax on amount shown in line 9 (if line 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	$	
11. If line 10 is (a) not over $400, enter 13% of amount on line 10 (b) over $400 but not over $100,000, enter $52 plus 9% of the excess over $400 (c) over $100,000, enter $9,016 plus 7.3% of the excess over $100,000		—
12. Subtract line 11 from line 10. Enter the difference here	$	—
13. Multiply amount on line 12 by 2. Enter this tax here. This is your combined normal tax and surtax	$	—
14. If alternative tax computation is made on separate Schedule D, enter here tax from line 12 on back of Schedule D	$	—
If you used the standard deduction in line 2, disregard lines 15, 16, and 17, and copy on line 18 the same figure you entered on line 8, 13, or 14, whichever is applicable		
15. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$	
16. Enter here any income tax paid at source on tax-free covenant bond interest		
17. Add the figures on lines 15 and 16 and enter the total here	$	—
18. Subtract line 17 from line 8, 13, or 14, whichever is applicable. Enter difference here and in item 5, page 1. This is your tax	$ 0	

2-5X

Government's Exhibit 3

(P. 145a-1)

FORM 1040
U.S. Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

FOR CALENDAR YEAR 1951

1951

or taxable year beginning ....., 195..., and ending ....., 195...

Do not write in these spaces

Serial No. 220375138

(Cashier's Stamp)

Name ACY LENNON
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 127 W. 138 ST.
(PLEASE PRINT. Street and number or rural route)

NEW YORK (City, town, or post office) — (Postal zone number) — NEW YORK (State)

Social Security No. 117-03-3081 Occupation SECT. + REC. DIR.

Your exemptions

1. List your name. If your wife (or husband) had no income, or if this is a joint return, list also her (or his) name.

A ACY LENNON (Your name)

B BEATRICE LENNON (Your wife's name—do not list if exemption is claimed on another return)

Check below if at the end of your taxable year you or your wife were—

A: 65 or over ☐ Blind ☐
B: 65 or over ☒ Blind ☐

On lines A and B below—
if neither 65 nor blind write the figure 1
if either 65 or blind write the figure 2
if both 65 and blind write the figure 3

Number of exemptions for you 1

Number of her (or his) exemptions 1

C. List names of your children (including stepchildren and *legally* adopted children) with 1951 gross incomes of less than $600 who received more than one-half of their support from you in 1951. See Instructions.

Name—and address if different from yours

Barbara
Della
Acy Jr.
William

Enter number of children listed 4

D. Enter number of exemptions claimed for close relatives listed in Schedule J on page 2 0

E. Enter total number of exemptions claimed in A to D above 6

Your income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1951, *before payroll deductions*. Persons claiming traveling or reimbursed expenses, see Instructions.

Print Employer's Name	Where Employed (City and State)	Income Tax Withheld	Total Wages
U.S. HOUSE of REPRESENTATIVE	NEW YORK — N.Y.	$ 284 77	$ 4217 46
ABYSSINIAN BAPTIST CHURCH	NEW YORK — N.Y.	34 40	2206 44
Enter totals		$ 319 17	$ 6423 90

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here 1712 50

4. Add income shown in items 2 and 3, and enter the total here ..... $ 8135 40

How to figure the tax

IF YOUR INCOME WAS LESS THAN $5,000.—Use the tax table on page 4 *unless you itemize deductions*. The table allows about 10 percent of your income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF INCOME WAS $5,000 OR MORE.—Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

Tax due or refund

5. (A) Enter your tax from table on page 4, or from line 13, page 3 $ NONE
(B) Enter your self-employment tax from line 31, separate Schedule C.
Enter total here → $ NONE

6. How much have you paid on your 1951 income tax?
(A) By tax withheld (in item 2, above). Attach Original Forms W-2 $ 319 17
(B) By payments on 1951 Declaration of Estimated Tax (include any overpayment on your 1950 tax not claimed as a refund)
Enter total here → 319 17

7. If your tax (item 5) is larger than payments (item 6), enter *balance of tax due* here. This balance must be paid in full with return ..... $

8. If your payments (item 6) are larger than your tax (item 5), enter the *overpayment* here .. $ 319 17
Enter amount of item 8 you want $ 319.17 (Refunded) $ (Credited on 1952 estimated tax)

Do you owe any prior year Federal tax for which you have been billed? (Yes or No) NO Is your wife (or husband) making a separate return for 1951? (Yes or No) NO If "yes," write her (or his) name .....

If you have filed a return for a prior year, state latest year 1950 Where filed? Sod

To which Collector's office did you pay amount claimed in item 6 (B), above? .....

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person, other than taxpayer, preparing this return) (Date)

(Name of firm or employer, if any)

Acy Lennon 3/15
(Signature of taxpayer) (Date)

(Signature of taxpayer's wife or husband if this is a joint return) (Date)

To assure split-income benefits, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN.

16—65304-1

— — — — Please Attach All W-2 Forms Here — — — —

(P. 167 L-2)

Schedule A.—INCOME FROM DIVIDENDS

Name of corporation declaring dividend	Amount	Name of corporation declaring dividend	Amount
	$		$

Enter total here → $

Schedule B.—INCOME FROM INTEREST

Name of payor	Amount	Name of payor	Amount
	$		$

Enter total here →

Schedule C Summary.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION, FARMING, AND PARTNERSHIP

1. Business profit (or loss) from separate Schedule C, line 24	$	
2. Farm profit (or loss) from separate schedule, Form 1040F		
3. Partnership, etc., profit (or loss) from Form 1065, Schedule J, Column 10		
4. Total of lines 1, 2, 3	$	
5. Less: Net operating loss deduction (attach statement)		
6. Net profit (or loss) (line 4 less line 5)		

Schedule D.—NET GAIN OR LOSS FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. From sale or exchange of capital assets (from separate Schedule D)	
2. From sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (amount you paid)	$	4. Amount received this year	$
2. Cost received tax-free in past years		5. Excess of line 4 over line 3	
3. Remainder of cost (line 1 less line 2)	$	6. Enter line 5, or 3 percent of line 1, whichever is greater (but not more than line 4)	

Schedule F.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule H)	4. Repairs (explain in Schedule I)	5. Other expenses (itemize in Schedule I)
	$	$	$	$
1. Totals	$	$	$	$

2. Net profit (or loss) (column 2 less sum of columns 3, 4, and 5)

Schedule G.—INCOME FROM ESTATES AND TRUSTS AND OTHER SOURCES

1. Estate or trust (Name) (Address)	$
2. Other sources (state nature)	
Enter total here →	
Total income (or loss) from above sources (Enter here and as item 3, page 1)	$

Schedule H.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SEPARATE SCHEDULE C AND SCHEDULE F

1. Kind of property (if buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed (or allowable) in prior years	5. Remaining cost or other basis to be recovered	6. Life used in accumulating depreciation	7. Estimated life from beginning of year	8. Depreciation allowable this year
~~FIXTURES~~	~~1949~~	~~$ 750 00~~	~~$ 300 00~~	~~$ 450 00~~	~~20 YRS~~	~~15 YRS~~	~~$ 150 00~~
FIXTURES	1949	500 00	50 00	450 00	10 YRS	7 YRS	100 00
FRIEDAIR	1950	250 00	50 00	150	5 YRS	3 YRS	50 00

Schedule I.—EXPLANATION OF LINES 6, 17, AND 20, SEPARATE SCHEDULE C AND COLUMNS 4 AND 5 OF SCHEDULE F

Line or Column No.	Explanation	Amount	Line or Column No.	Explanation	Amount
20	LIGHT	$ 155 00			$
	TELEPHONE	45 00			
	SUPPLIES	115 00			

Schedule J.—EXEMPTIONS FOR CLOSE RELATIVES—(See Instructions)

1. Name of dependent relative. Also give address if different from yours	2. Relationship	3. Did dependent during 1951— (a) Have gross income of $600 or more?	(b) Reside in your home?	(c) Receive entire support from you?	4. If answer to either 3(b) or 3(c) is "No" enter amount spent for dependent's support in 1951 by— You (and your wife if this is a joint return)	Others, and by dependent from own funds
					$	$

Enter here and as item 1D, page 1, the number of close relatives claimed above ☐

☆ GPO 16—65304-1

2

SCHEDULE C (File with Form 1040)
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

1951

SCHEDULE OF PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION AND COMPUTATION OF SELF-EMPLOYMENT TAX (for old-age and survivors insurance)

For calendar year 1951 or fiscal year beginning January 1, 1951, and ending December 31, 1951

Name and address under which Form 1040 is filed Acy Lennon 127 W. 138 St. N.Y.

If a joint return, name of husband or wife having net earnings from self-employment

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION
(For reporting farm income, see Form 1040 Instructions)

State (1) nature of business Confectionary
(2) business name Acy Lennon
(3) business address

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with your business or profession

1. Total receipts from business or profession			$ 14385 35
COST OF GOODS SOLD			
2. Inventory at beginning of year	$ 725 -		
3. Merchandise bought for manufacture or sale	13122 50		
4. Cost of labor			
5. Material and supplies			
6. Other costs (explain in Schedule I, Form 1040)			
7. Total of lines 2 to 6	13847 50		
8. Less inventory at end of year	975 00		
9. Net cost of goods sold (line 7 less line 8)			12972 50
10. Gross profit (line 1 less line 9)			$ 1412 85
OTHER BUSINESS DEDUCTIONS			
11. Salaries and wages not included in line 4	$ 2080 00		
12. Rent on business property	495 00		
13. Interest on business indebtedness			
14. Taxes on business and business property			
15. Bad debts arising from sales or services			
16. Depreciation and obsolescence (explain in Schedule H, Form 1040)	150 00		
17. Repairs (explain in Schedule I, Form 1040)	85 35		
18. Depletion of mines, oil and gas wells, timber, etc. (submit schedule)			
19. Amortization of emergency facilities (attach statement)			
20. Other business expenses (explain in Schedule I, Form 1040)	315 00		
21. Total of lines 11 to 20			3125 35
22. Net profit (or loss) before losses of business property (line 10 less line 21)			$ 1712 50
23. Less: Losses of business property (attach statement)			
24. Net profit (or loss) (line 22 less line 23). Enter here and on line 1, Schedule C Summary, page 2, Form 1040			$ 1712 50

COMPUTATION OF SELF-EMPLOYMENT TAX (See Instructions on other side)

25. Net earnings (or loss) from self-employment included in line 22, above	$ 1712 50	
26. Net earnings (or loss) from self-employment from partnerships, joint ventures, etc. (from column 10, Schedule K, page 4, Form 1065)	NONE	
27. Total net earnings (or loss) from self-employment (lines 25 and 26)		$ 1712 50
(If total of net earnings is under $400, do not make any entries below)		
28. Wages paid to you during the taxable year which were subject to withholding for old-age and survivors insurance		6423 90
29. Total of lines 27 and 28		$ 4711 40
30. Self-employment income subject to tax:		
If line 29 is (a) *not over* $3,600, enter amount shown on line 27		
(b) *over* $3,600—and amount on line 28 is $3,600 or more, enter "none"		$ NONE
—and amount on line 28 is under $3,600 enter difference between $3,600 and amount on line 28		
31. Self-employment tax—2¼ percent of amount shown on line 30. Enter tax here and as item 5(B), page 1, Form 1040		$ 3-3

ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW—

If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize

	Describe deductions and state to whom paid. If more space is needed, attach additional sheets.		
Contributions	Abyssinian Baptist Church	$ 465 00	
	Miscellaneous Charities	110 00	
	Allowable Contributions (not in excess of 15 percent of item 4, page 1)		$ 575 00
Interest	A.B.C. Credit Union	$ 12 00	
	Total Interest		12 00
Taxes	Miscellaneous Sales Tax	$ 40 00	
	Total Taxes		40 00
Losses from fire, storm, or other casualty, or theft		$	
	Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses *(if over 65 see instructions)*		$	
	Net Expenses (not compensated by insurance or otherwise)	$	
	Enter 5 percent of item 4, page 1, and subtract from Net Expenses.		
	Allowable Medical and Dental Expenses. See Instructions for limitation		
Miscellaneous *(See Instructions)*	Expenses Away from Home TO AND FROM WASH, D.C.	$ 925 00	
	Total Miscellaneous Deductions		925 00
	Total Deductions		$ 1952 00

TAX COMPUTATION FOR CALENDAR YEAR 1951 (For Other Taxable Years Attach Form 1040FY)

1. Enter amount shown in item 4, page 1. This is your Adjusted Gross Income	$ 4711 40
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized *and line 1, above, is $5,000 or more:* (*a*) married persons filing separately enter $500, (*b*) all others enter 10 percent of line 1, but not more than $1,000	1552 00
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 3159 40
4. Multiply $600 by total number of exemptions claimed in item 1E, page 1. Enter total here	3600 00
5. Subtract line 4 from line 3. Enter difference here. (If line 1 includes partially tax-exempt interest, see instructions)	$ NONE 40
6. **If line 5 is not more than $2,000**—Enter 20.4 percent of amount on line 5 and disregard lines 7, 8, and 9. This is your normal tax and surtax	$
7. **If line 5 is more than $2,000 and you are a single person or a married person filing separately**—Use tax rates on last page of instructions to figure tax on amount on line 5. This is your normal tax and surtax	$
8. **If line 5 is more than $2,000 and you are filing a joint return**—	
(*a*) Enter here one-half of the amount of line 5	$
(*b*) Use tax rates on last page of instructions to figure tax on amount on line 8 (*a*)	
(*c*) Multiply amount on line 8 (*b*) by 2. This is your normal tax and surtax	$
9. If alternative tax computation is made, enter here tax on back of separate Schedule D	$
Disregard lines 10, 11, and 12, and copy on line 13 the same figure you entered on line 6, 7, 8 (*c*), or 9, unless you used itemized deductions	
10. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$
11. Enter here any income tax paid at source on tax-free covenant bond interest	
12. Add the figures on lines 10 and 11 and enter the total here	$
13. Subtract line 12 from line 6, 7, 8 (*c*), or 9. Enter difference here and as item 5 (A), page 1. This is your tax	$ NONE

3-4-52

Government's Exhibit 4

FORM 1040
U. S. Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1952

1952

or taxable year beginning Jan, 1952, and ending Dec, 1952

Do not write in these spaces
Serial No. 250902835
(Cashier's Stamp)

Name Acy + BEATRICE LENNON
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 127 West 138 St C/o MALONE
(PLEASE PRINT. Street and number or rural route)

New York (City, town, or post office) 30 (Postal zone number) N.Y. (State)

Social Security No. 117-03-3081 Occupation Boys Rec. Direc. Congress. Sec.

---Please Attach All Original W-2 Forms Here---

Your exemptions

1. List your name. If your wife (or husband) had no income, or if this is a joint return, list also her (or his) name.
   A Acy Lennon
   B BEATRICE LENNON
   (Your wife's name—do not list if exemption is claimed on another return)

Check below if at the end of your taxable year you or your wife were—
65 or over ☐ Blind ☐
65 or over ☐ Blind ☐

On lines A and B below—
if neither 65 nor blind write the figure 1
if either 65 or blind write the figure 2
if both 65 and blind write the figure 3

Number of exemptions for you 1
Number of her (or his) exemptions 1

C. List names of your children (including stepchildren and *legally* adopted children) with 1952 gross incomes of less than $600 who received more than one-half of their support from you in 1952. See Instructions.

Name—and address if different from yours

BARBARA
DELLA
ACY JR
WILLIAM

RECEIVED JUN 15 1953 REVO UPPER MAIN REC

Enter number of children listed 4

D. Enter number of exemptions claimed for close relatives listed in Schedule I on page 0

E. Enter total number of exemptions claimed in A to D above 6

Your income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1952, *before payroll deductions*. Persons claiming traveling or reimbursed expenses, see Instructions.

Print Employer's Name	Where Employed (City and State)	Total Wages		Income Tax Withheld	
U.S. House of Representatives	Wash. D.C	$ 4418	28	$ 360	00
Abyssinian Baptist Church	N.Y.C	2312	88	50	40
	Enter total →	[illegible]	16	$ 410	40

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here 433 42
4. Add income shown in items 2 and 3; and enter the total here ..... $ 5297 74

How to figure the tax

(Before figuring your tax, see Schedule J for "Head of Household." If you claim such status, check here ☐.)
IF YOUR INCOME WAS LESS THAN $5,000.—Use the tax table on page 4 *unless you itemize deductions*. The table allows about 10 percent of your income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.
IF YOUR INCOME WAS $5,000 OR MORE.—Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

Tax due or refund

5. (A) Enter your tax from table on page 4, or from line 13, page 3 $ NONE
   (B) Enter your self-employment tax from line 35, separate Schedule C
   Enter total here → $ NONE
6. How much have you paid on your 1952 income tax?
   (A) By tax withheld (in item 2, above). Attach Original Forms W-2 $ 410 40
   (B) By payments on 1952 Declaration of Estimated Tax (include any overpayment on your 1951 tax not claimed as a refund)
   Enter total here → 410 40
7. If your tax (item 5) is larger than payments (item 6), enter *balance of tax due* here. This balance must be paid in full with return ..... $
8. If your payments (item 6) are larger than your tax (item 5), enter the *overpayment* here ..... $ 410 40
   Enter amount of item 8 you want $ 410.40 (Refunded) $ (Credited on 1953 estimated tax)

Do you owe any prior year Federal tax for which you have been billed? (Yes or No) No Is your wife (or husband) making a separate return for 1952? (Yes or No) No If "yes," write her (or his) name
If you have filed a return for a prior year, state latest year 1951 Where filed? Nyc
To which director's (formerly collector's) office did you pay amount claimed in item 6 (B), above? 30th

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

(Signature of person, other than taxpayer, preparing this return) (Date) 6/15

(Name of firm or employer, if any)

Acy Lennon 6/14
(Signature of taxpayer) (Date)

Beatrice Lennon 6/15
(Signature of taxpayer's wife or husband if this is a joint return) (Date)

To assure split-income benefits, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN.

16—65304-3

Schedule A.—INCOME FROM DIVIDENDS

Name of corporation declaring dividend	Amount	Name of corporation declaring dividend	Amount
	$		$
			Enter total here → $

Schedule B.—INCOME FROM INTEREST

Name of payor	Amount	Name of payor	Amount
	$		$
			Enter total here →

Schedule C Summary.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION, FARMING, AND PARTNERSHIP

1. Business profit (or loss) from separate Schedule C, line 23	2065	$ 2713 43
2. Farm profit (or loss) from separate schedule, Form 1040F		
3. Partnership, etc., profit (or loss) from Form 1065, Schedule K, Column 3		
(Partnership name) (Address)		
4. Total of lines 1, 2, 3		$ 2713 43
5. Less: Net operating loss deduction (attach statement)		
6. Net profit (or loss) (line 4 less line 5)	Loss	2713 42

Schedule D.—NET GAIN OR LOSS FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. From sale or exchange of capital assets (from separate Schedule D)
2. From sale or exchange of property other than capital assets (from separate Schedule D)

Schedule E.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (amount you paid)	$	4. Amount received this year	$
2. Cost received tax-free in past years		5. Excess of line 4 over line 3	
3. Remainder of cost (line 1 less line 2)	$	6. Enter line 5, or 3 percent of line 1, whichever is greater (but not more than line 4)	

Schedule F.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule H)	4. Repairs (attach statement)	5. Other expenses (attach statement)
	$	$	$	$
1. Totals	$	$	$	$
2. Net profit (or loss) (column 2 less sum of columns 3; 4, and 5)				

Schedule G.—INCOME FROM ESTATES AND TRUSTS AND OTHER SOURCES

1. Estate or trust		
2. Other sources (state nature) (Name) Commissions, Publications etc. (Address)		
Total income (or loss) from above sources (Enter here and as item 3, page 1)	Loss	$ 1433 42

Schedule H.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE F

1. Kind of property (If buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed (or allowable) in prior years	5. Remaining cost or other basis to be recovered	6. Life used in accumulating depreciation	7. Estimated life from beginning of year	8. Depreciation allowable this year
		$	$	$			$

Schedule I.—EXEMPTIONS FOR CLOSE RELATIVES—(See Instructions)

1. Name of dependent relative. Also give address if different from yours	2. Relationship	3. Did dependent during 1952— (a) Have gross income of $600 or more?	(b) Reside in your home?	(c) Receive entire support from you?	4. If answer to either 3(b) or 3(c) is "No" enter amount spent for dependent's support in 1952 by— You (and your wife if this is a joint return)	Others, and by dependent from own funds
					$	$

Enter here and as item 1D, page 1, the number of close relatives claimed above ☐

Schedule J.—HEAD OF HOUSEHOLD (See Instructions)

(Not applicable where wife or husband died during taxable year)

1. Were you unmarried (or legally separated) at the close of your taxable year? (Yes or No)
2. Did any person for whom you are entitled to an exemption, or your unmarried child, grandchild, or stepchild, even though not a dependent, share during your entire taxable year your home which was your principal residence? (Yes or No)

   List name(s) and relationship to you
3. Did you furnish more than one half of the cost of maintaining the household during the taxable year? (Yes or No)

   If you did not furnish the entire cost, state total amount furnished by you $; by all others (including those sharing your home) $
4. If all of the above questions are answered "Yes," you may determine your tax as Head of a Household.

GPO 16—65304-2

4-2

RECEIVED
13 JUN 18 1953
DIR. I.
UPPER MAN. 10

June 15, 1953

U S Treasury Department
Internal Revenue Service
110 East 45 Street
New York 17, New York

Dear Sir:

Notice of extention of time for the filing of my income tax return for the year ended December 31, 1952 has been misplaced. It was dated March 23, 1953 I believe.

I called your office this morning and explained this , and was informed that I should attach a letter to this effect and that would be all that was necessary.

Respectfully yours,

Acy lennon

4-3

SCHEDULE C (Form 1040)
U. S. Treasury Department
Internal Revenue Service

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION 1952

(For Computation of Self-Employment Tax, see Page 3)

For Calendar Year 1952 or taxable year beginning JANUARY 1, 1952, and ending DECEMBER, 1952

Name and Address (from Form 1040) ACY & BEA LENNON 127 W 13 ST C/O MALONE

(Partnerships and joint ventures should file on Form 1065)

(I) Principal business activity (see instructions) STATIONARY & CANDY STORE
(Retail trade, wholesale trade, lawyer, etc.) (Principal product or service)

(II) Business name ACY LENNON

(III) FICA employer identification number, if any (see instructions)

(IV) Business address (see instructions) 2302 7TH AVE
(Street and number or rural route) (City, town, post office) (County) (State)

(V) Were you the sole proprietor of this business in 1951? Yes ☑ No ☐. If "No," check whether this business in 1952 became a successor to a corporation ☐, a partnership ☐, another sole proprietorship ☐, or started as an entirely new business ☐. Where applicable, give name of such predecessor

Do NOT include cost of goods withdrawn for personal use or deductions not connected with your business or profession

1. Total receipts from business or profession		$ 11800	42
COST OF GOODS SOLD			
2. Inventory at beginning of year	$ 875 -		
3. Merchandise bought for manufacture or sale	10940 -		
4. Cost of labor			
5. Material and supplies			
6. Other costs (explain in Schedule C–2)			
7. Total of lines 2 to 6	$ 11815 -		
8. Less inventory at end of year	NONE		
9. Net cost of goods sold (line 7 less line 8)		11815	00
10. Gross profit (line 1 less line 9)		$ (15	42)
OTHER BUSINESS DEDUCTIONS			
11. Salaries and wages not included in line 4	$ 780 -		
12. Rent on business property	960 -		
13. Interest on business indebtedness			
14. Taxes on business and business property			
15. Losses of business property (attach statement)			
16. Bad debts arising from sales or services			
17. Depreciation and obsolescence (explain in Schedule C–1)	150 -		
18. Repairs (explain in Schedule C–2)			
19. Depletion of mines, oil and gas wells, timber, etc. (submit schedule)			
20. Amortization of emergency facilities (attach statement)			
21. Other business expenses (explain in Schedule C–2)	808 -		
22. Total of lines 11 to 21		2698	-
23. Enter net profit (or loss) (line 10 less line 22). Also enter on line 24, page 3, and on line 1, Schedule C Summary, Form 1040		$ 2713	42

Schedule C-1. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 17

1. Kind of property (if buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed (or allowable) in prior years	5. Remaining cost or other basis to be recovered	6. Life used in accumulating depreciation	7. Estimated life from beginning of year	8. Depreciation allowable this year
FIXTURES	1949	$ 1000 -	$ 400 -	$ 600 -	10	6	$ 100 -
FRIGIDAIRE	1950	250 -	100 -	150 -	5	2	50 -

Schedule C-2. EXPLANATION OF LINES 6, 18, AND 21

Line or Column No.	Explanation	Amount	Line or Column No.	Explanation	Amount
21	WINDOW CLEANING	$ 78 -	21	ELECTRIC BILLS	$ 150 -
	MOPS, WAXING, DISINFECTANT	100 -		TELEPHONE	170 -
	SIGN REPAIR	54 -		SUPPLIES ETC IN MY TIME	100 -
	CLEANING OF STORE	156 -		EXPENSE	
	GARBAGE REMOVAL				

4-4

16-02533-2

COMPUTATION OF SELF-EMPLOYMENT TAX

(For old-age and survivors insurance)

Name of self-employed person Acy + Beatrice Lennon

State nature of business, if any, subject to self-employment tax Candy Store

24. Net profit (or loss) shown on line 23, page 1	$ (2713	42)	
25. Losses of business property shown on line 15, page 1	—		
26. Total of lines 24 and 25			$ (2713 | 42)
27. Less: Net income (or loss) from excluded services or sources included in line 26. Specify excluded services or sources			—	—
28. Net earnings from self-employment (line 26 less line 27)			$ (2713 | 42)
29. Net earnings (or loss) from self-employment from partnerships, joint ventures, etc. (from column 10, Schedule K, Form 1065)			—	—
30. Total net earnings (or loss) from self-employment (line 28 plus line 29). (If total of net earnings is under $400, do not make any entries below)			$ (2713 | 42)
31. Maximum amount subject to self-employment tax	$ 3,600	00		
32. Less: Wages paid to you during the taxable year which were subject to withholding for old-age and survivors insurance. (If such wages exceed $3,600, enter $3,600)	—	—		
33. Maximum amount subject to self-employment tax after adjustment for wages	$			
34. Self-employment income subject to tax—Line 30 or 33, whichever is smaller			$ None	
35. Self-employment tax—2¼ percent of amount on line 34. Enter here and as item 5 (B), page 1, Form 1040			$	

GPO 16—62533-2

FILL IN ITEMS BELOW BUT DO NOT DETACH

Schedule C-a (Form 1040)
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

U. S. REPORT OF SELF-EMPLOYMENT INCOME

(For Federal Old-Age and Survivors Insurance)

1952

For calendar year 1952 or fiscal year beginning ____, 1952, and ending ____, 195__

State nature of business subject to self-employment tax Candy Store

ENTER HERE THE SOCIAL SECURITY ACCOUNT NUMBER OF THE PERSON NAMED BELOW

000	00	0000
117	03	3081

ENTER BELOW, NAME OF SELF-EMPLOYED PERSON AND BUSINESS ADDRESS

Acy Fennell
(Name)

1302 7th. Ave
ADDRESS (Street and number, or rural route)

New York, N.Y.
(City or town, postal zone number) (State)

Enter total net earnings from self-employment shown on line 30 above $ (2713.42)

Enter wages shown on line 32 above $ —

Enter self-employment income shown on line 34 above $ None

4-5

ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW—
If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize

	Describe Deductions and state to whom paid. If more space is needed, attach additional sheets.			
Contributions	Church dues & Building fund	$ 4 50	-	
	Red Cross	20	-	
	Heart fund	20	-	
	VARIOUS Other CHARITIES	210	-	700
	Allowable Contributions (not in excess of 20 percent of item 4, page 1)			$ [illegible]
Interest	A.B.C Credit union	$ 25	-	
	Total Interest			25
Taxes	Sales & Sundry TAXES	$ 75	-	
	Total Taxes			75
Losses from fire, storm, or other casualty, or theft		$		
	Total Allowable Losses (not compensated by insurance or otherwise)			
Medical and dental expenses *(if over 65 see Instructions)*	PREM ON HEALTH INSURANCE (H.I.P)	$ 140	-	
	TOTAL DENTAL BILL	150	-	
	Glasses for family	100		
	Drugs & Supplies	90		
	Net Expenses (not compensated by insurance or otherwise)	$ 480	-	
	Enter 5 percent of item 4, page 1, and subtract from Net Expenses	264	89	
	Allowable Medical and Dental Expenses. See Instructions for limitation			215 11
Miscellaneous *(See Instructions)*	Exp. To & from Wash. D.C	$ 525	-	
	Exp To Convention Chicago Ill	300	-	
	Supplies used for Job as Recreational Director	400	-	
	Total Miscellaneous Deductions			1625
	Total Deductions			$ 2640 11

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 4, page 1. This is your Adjusted Gross Income	$ 5297	24
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized *and line 1, above, is $5,000 or more:* (*a*) married persons filing separately enter $500, (*b*) all others enter 10 percent of line 1, but not more than $1,000	2640	11
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 2657	63
4. Multiply $600 by total number of exemptions claimed in item 1E, page 1. Enter total here	3600	
5. Subtract line 4 from line 3. Enter difference here. (If line 1 includes partially tax-exempt interest, see Instructions)	$ None	
If line 5 is not more than $2,000 ——		
6. Enter 22.2 percent of amount shown on line 5 and disregard lines 7, 8, and 9	$	
If line 5 is more than $2,000 ——		
7. **And you are a single person, a married person filing separately, or a head of household ——** Single persons and married persons filing separately use Tax Rate Schedule I on page 12 of Instructions to figure tax on amount on line 5; heads of household use Tax Rate Schedule II	$	
8. **And you are filing a joint return ——** (*a*) Enter one-half of amount on line 5	$	
(*b*) Use Tax Rate Schedule I on page 12 of Instructions to figure tax on amount on line 8 (*a*)		
(*c*) Multiply amount on line 8 (*b*) by 2	$	
9. If alternative tax computation is made, enter here tax from separate Schedule D	$	
Disregard lines 10, 11, and 12, and copy on line 13 the same figure you entered on line 6, 7, 8 (*c*), or 9, unless you used itemized deductions		
10. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$	
11. Enter here any income tax paid at source on tax-free covenant bond interest		
12. Add the figures on lines 10 and 11 and enter the total here	$	
13. Subtract line 12 from line 6, 7, 8 (*c*), or 9. Enter difference here and as item 5 (A), page 1	$ None	

16—65304-2

4-6K

Government's Exhibit 14

State of New York)
) ss:
County of New York)

Paul L. Klein, being first duly sworn, upon his oath deposes and says:

I reside at 101 Central Park West, New York, New York.

During most of 1951 through February, 1952 I was the Assistant Director of the Mayor's Committee on Unity. Part of my duties with this committee was the fostering of inter-racial unity. While so employed, I voluntarily contributed my time and services to assisting the Peoples Committee and the Tenants Protective Association Inc., both of which are organizations in Harlem operating for the civic good. In addition, I served as public relations advisor to Mr Powell on a voluntary basis.

In late 1952 I found myself in poor financial straits and approached Congressman A. C. Powell, Jr. for a loan. He did not have the money but through his influence I was loaned $3,000.00 by the Tenants Protective Association Inc. of which Acy Lennon and William J. Hampton are the principal officers. I signed a note evidencing this loan, but do not have a copy. I believe the note was made either to Acy Lennon and William J. Hampton or the Tenants Protective Association Inc. or jointly to all three. To the best of my recollection this note was a demand note and if it did carry interest, the rate was very low. I have made no payments whatsoever on this loan, but fully intend repaying it. I did not deposit this check but believe I cashed it.

The $3,000.00 received was a loan, and did not constitute any type of payment for services rendered, nor was it given to me to invest for Acy Lennon, William J. Hampton or A. C. Powell, Jr.

I have made this statement freely and voluntarily, without any threats or rewards or promise of reward having been made to me in return for it.

Paul L. Klein
Paul L. Klein

Sworn to before me
this 9th day of May 1955

Stanley J. Bulson
Special Agent

State of New York)
County of New York) ss:

Paul L. Klein, being first duly sworn, upon his oath deposes and says.

With refernce to an affidavit signed on this date, I wish to add that A. C. Powell Jr. and I are very close personal friends. In fact, after he had a heart ~~attack~~ condition in 1952, I lived with him at West Hampton Beach off and on for two months. I also assisted Powell in his campaign

Paul L. Klein

PAUL L. KLEIN

Sworn to before me this
9th day of May 1955

Harley J. Bulson

SPECIAL AGENT

Office - Supreme Court, U.S.
FILED
AUG 7 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 349

ACY LENNON,

Petitioner,

AGAINST

UNITED STATES OF AMERICA,

Respondent,

—o—

ACY LENNON,

Petitioner,

AGAINST

UNITED STATES OF AMERICA,

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND APPENDIX

ACY LENNON,
Petitioner, Pro Se.

LEONARD FELDMAN,
64 Wall Street,
New York 5, N. Y.,
Counsel for Petitioner.

LODER APPEAL PRESS, INC., 65 Duane Street, N. Y. C. WOrth 2-0689.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

Number .....

ACY LENNON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ACY LENNON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND APPENDIX

To the Honorable the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, to review two judgments of that Court, both entered

June 12, 1957 (petition for rehearing thereof denied July 12, 1957), affirming a judgment of conviction of the United States District Court for the Southern District of New York (Archie O. Dawson, J.), in which the petitioner was convicted on four counts of income tax evasion for the years 1949 through 1952 inclusive, and involving for the years in question the following sums:

1949	$388.39
1950	$525.41
1951	$488.50
1952	$390.10.

Petitioner was sentenced to a year and a day on the first count; to a year each on the other three counts (all to run concurrently). Petitioner was also fined $2,000.

Opinions Below*

The opinion of the Circuit Court of Appeals (by Sterry R. Waterman, U. S. Circuit Judge) appears at page 2a herein, and is reported at ..... F. 2d (Adv.) ..... 57-2 U. S. T. C. ..... The judgments appear on page 11a herein.

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*References to the record are indicated as follows:

(A followed by page number)—indicates appellant's appendix below.

(G followed by page number)—indicates appellee's appendix below.

(P followed by page number)—indicates page of appendix annexed to this Petition.

(T followed by page number)—indicates transcript of testimony.

Jurisdiction

The judgments of the Circuit Court of Appeals were entered June 12, 1957 (P. 11a).

Petition for rehearing was filed June 27, 1957 and was denied July 12, 1957 (P. 11a).

There has been no extension of time for filing this petition.

The jurisdiction of this Court in invoked under 62 Stat. 928, 28 U. S. C. A. 1254; 62 Stat. 963, 28 U. S. C. A. 2106; Rules 19 and 22(2) of the Rules of this Court; and Title 18, U. S. C. A., Rule 37 Federal Rules of Criminal Procedure.

Jurisdiction of the District Court was invoked under 53 Stat. 62, as amended; 56 Stat. 144; 57 Stat. 144; 58 Stat. 234; 26 U. S. C. A. 145(b).

Jurisdiction of the Court of Appeals was invoked under 65 Stat. 726, 28 U. S. C. A. 1291.

Reasons Relied on for Granting Writ*

1) By permitting petitioner's trial to be transformed "into an arena for political exposés" involving petitioner's employer, Congressman Adam Clayton Powell, the Court of Appeals so far sanctioned, and itself so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

---

*Quotations in this section are from the opinion of the Court of Appeals used in describing petitioner's claim of prejudice. Significantly, the Court of Appeals nowhere wrote that the complained of prejudice had not occurred.

2) As a result of the prosecution devoting two-thirds of petitioner's trial to the issue of an alleged payment of $3,000 to Congressman Powell and the political insinuations attendant thereon, which issue was irrelevant and prejudicial to petitioner, petitioner was deprived of the fair, unprejudiced and impartial trial guaranteed to him by the Constitution of the United States.

3) The act of the Trial Court in ultimately striking the offensive testimony, and the delivery by the Trial Court of a perfunctory admonition to the jury to disregard such prejudicial testimony, did not overcome "the prejudice created during several days of lengthy testimony by a number of Government witnesses".

4) The petitioner having been convicted after an unfair and prejudicial trial, there was a complete misapplication by the Court of Appeals of the decisions by this Court as to the judgment to be rendered following such a conviction.

5) Each count upon which the petitioner was convicted charged two unrelated issues. The cause was submitted to the jury under an instruction which left the jury free to combine the issues and thus to convict the petitioner of the acts charged by less than the unanimity required by law. The propriety of the instructions, under the circumstances of this case, affects all criminal prosecutions and has not been, but should be, settled by this Court.

The Questions Presented

1) Where the trial record is clear that the defendant's trial was prejudiced by the persistent injection of improper, irrelevant and prejudicial evidence, and where the Court of Appeals, on review of the record, describes the defendant's assertion of prejudice as substantial and that

there is much merit to his claim that the Trial Court's instruction to the jury did not overcome such prejudice, the Court of Appeals may not overlook such prejudice and affirm on its own conclusion of defendant's guilt but must reverse and remand for a new trial.

2) When multiple issues were presented to the jury in a single count and the defendant requested a special verdict on each issue (which request was denied and an exception taken thereto), so that on the main charge the jury was left free to reach a compromise verdict, the Court of Appeals erred in failing to reverse and remand for a new trial.

3) When, after beginning its deliberations, the jury returned for special instructions as to its findings with regard to the multiple issues in each count, and the response of the Trial Court thereto was misleading so that a compromise verdict was encouraged, the fact that the main charge may have been correct did not overcome the error of the final instruction and the Court of Appeals erred in failing to reverse and remand for such error.

Statutes Involved

The statutes involved in this case are as follows:

Constitution of the United States, Fifth Amendment;

Constitution of the United States, Sixth Amendment;

26 U. S. C. A., 145(b);

28 U. S. C. A., 2111;

Title 18, U. S. C. A., Rule 31(a), Rules of Criminal Procedure;

Title 18, U. S. C. A., Rule 52, Rules of Criminal Procedure;

and are set forth in the appendix herein.

Statement of the Case

The defendant, Acy Lennon is one of three Congressional secretaries of Congressman Adam Clayton Powell. In the course of an investigation into the affairs of Congressman Powell, all three of his secretaries were indicted.

Of the three, one Mrs. Dodson was tried and convicted a few months before the defendant was. The third, William Hampton has not yet been tried and his case is not on the trial calendar.

In both the *Dodson* and *Lennon* cases, the principal witness for the prosecution was Joseph E. Ford, a former Democratic District Leader and former campaign manager of Congressman Powell (T. 68). Ford had broken with the Congressman in 1951 and at the time of the trial of the defendant was the Congressman's political enemy (A. 112a-113a). Prior to having broken with the Congressman, Ford's second in command was the defendant (A. 41a).

The defendant was indicted in 1956 on six counts of alleged income tax invasion (A. 3a-14a). Under the first four counts, relating to the years 1949 through 1952 inclusive (and on which four counts he was convicted), he was charged with knowingly understating his income and with claiming exemptions in each of those years for two dependent sons when he was not entitled to claim such two sons as exemptions (A. 15a-20a).

With regard to the understated income for the years 1949, 1950 and 1951, the indictment charged the failure to report income received by the defendant as an employee of Joseph E. Ford in the latter's tax service (A. 18a-19a). Ford claimed to have paid the defendant $1,600 by check in 1949; $1,700 by check in 1950 and, $1,600 in cash in 1951 (A. 33a-41a). The checks were introduced into evi-

dence (Exs. 9, 10) but these showed that Ford was the last endorser and had received the cash from the checks (A. 38a-41a). The bank involved also verified that Ford had received the proceeds of the checks (A. 156a-157a). Ford, however, testified that he had given the cash to the defendant. So that with regard to these alleged payments there was only Ford's uncorroborated story.

With regard to the unreported income for the year 1952, this was an amount of $1,500 allegedly received by the defendant as commissions on the sale of cooperative apartments in an interracial housing project, and allegedly unreported by him (A. 19a).

The $1,500 transaction turned out to be a $3,000 payment made by one David Kent, the builder of an interracial housing project.* The payment of $3,000 had been made by check to a nonprofit corporation known as Tenants Protective Association (G. 8a, 14a-15a). There was no evidence that defendant was an officer, director or employee of T. P. A. (G. 70a). The records of T. P. A. showed that the $3,000 had not been paid out to defendant but to one Paul Klein (G. 63a-64a)—a friend of Congressman Powell (G. 35a).

There was absolutely no evidence that the defendant received any part of this $3,000. As a matter of fact, all the evidence pointed away from the defendant. Indeed, and as Judge Dawson stated in dismissing this item from the case:

> " * * * there is no testimony that it was paid out to Mr. Lennon * * * I find no evidence connecting that $3,000, or any part of it, with Mr. Lennon * * * " (T. 971).

---

*The Government charged that Hampton received one-half of this $3,000 amount and the defendant the other half (T. 10-12).

The Government at all times tacitly admitted that the defendant never received the money (see Point I, *infra*, T. 11, A. 136a). Its position always was that Congressman Powell received this money.

With regard to the prosecution's claim of improper dependents, here again the principal witness was Joseph E. Ford. Ford testified that in a 10 year period he never heard the defendant mention any sons, nor on occasional visits to the defendant's home had he seen any sons (A. 41a-43a). The prosecution also produced the defendant's daughter who testified that she had no brothers living at home but she had heard rumors that she had brothers (A. 74a).

The prosecution offered no other testimony or evidence with regard to the issue of dependents.

The Unreported Income From The Sale of Apartments For The Year 1952:

Out of some 328 pages of direct testimony by Government witnesses, 212 of those pages, two-thirds of the Government's entire case, was devoted to this particular item.

The testimony with regard to this issue was spread throughout the Government's direct case.

It was on this issue that the prosecution, allegedly devoted to assuring the defendant a fair trial, managed to ring in the following prejudicial and unrelated items:

a) the F.H.A. scandals;

b) the Senate investigation of F.H.A. scandals;

c) the F.B.I.;

d) the insinuation of impropriety in the conduct of Congressman Powell; and

e) the absence of "White House" pressure in causing Congressman Powell to take the stand as a prosecution witness.

As the prosecution used the trial to introduce these juicy and news-worthy bits of scandal, it continually assured the Trial Court that ultimately a connection with the defendant and his indictment would be made (G. 53a-55a, 61a, 64a, 67a, 70a, 77a-78a, 81a-82a).

The connection was never made.

Yet, by the time the prosecution completed the presentation of its case, the atmosphere of the trial was redolent with the smell of fraud, perjury and political corruption. The technique employed was that of guilt by association.

The Trial Court threw out the entire issue at the end of the prosecution's case. The irreparable damage, however, had been done.

It is out of this issue that the petitioner's claim of prejudice and the unfairness of his trial arises.

The indictment, as amplified by the Government's bill of particulars, stated that on August 8, 1952 the petitioner received $1,500 as "commissions on sale of apartments" (A. 16a).

In its *opening to the jury*, the Government stated its contention as follows:

> a) One David Kent, the builder of an interracial housing project in Queens County, New York City, enlisted the aid of Congressman Powell to obtain purchasers for the cooperative apartments in the project;
>
> b) Congressman Powell agreed to push the sales of the apartments and also agreed that the sale

of the apartments was to be pushed through the offices of the Abyssian Baptist Church (of which the Congressman was the minister) and through his congressional office in New York City;

c) The defendant and one William Hampton (another of Congressman Powell's secretaries) were to act as sales agents;

d) A commission of $15 on each apartment sold was to be received from the builder, Mr. Kent;

e) The sales were in fact pushed by Congressman Powell, and the defendant and Mr. Hampton acted as the sales agents.

The Government then continued in its opening, as follows:

"Now, in July, 1952, when it came time for Mr. Kent to pay Mr. Lennon and Mr. Hampton the $3,000 which they earned for selling these apartments, *Mr. Kent did not pay the money directly to Mr. Lennon and Mr. Hampton.* Instead, at their request, he turned over to Mr. Lennon a check in the amount of $3,000 payable to the Tenants Protective Association. That was a small corporation, a non-profit corporation. *Now, this was a subterfuge to hide the income earned by Mr. Lennon and Mr. Hampton. They did not wish to pay income taxes on this amount because the money actually was to be Congressman Powell's to dispose of* * * *

"Now, shortly after Mr. Kent turned over this $3,000 to Mr. Lennon, Congressman Powell asked an intimate friend of his to obtain the money from Mr. Lennon and Mr. Hampton. The $3,000 had been deposited to the account of the Tenants Protective

> Association on July 11, 1952. *Exactly three days later this same $3,000 was transferred by check to this friend of Mr. Powell's. He held on to the check for more than three months, did not cash it until a few days before election time in 1952. Congressman Powell was running for reelection in 1952.*" (T. 8-12, emphasis supplied.)

Objection was promptly made at the very start of the Government's opening statement to the jury introducing this collateral issue (T. 9). The Trial Court overruled this objection. Thereafter a parade of witnesses took the stand with regard to this issue. David Kent, the builder, was called as a Government witness and testified that he did not pay the defendant or Hampton personally, but had paid the Tenants Protective Association (G. 14a-15a). Despite the fact that he was the prosecution's witness, the prosecution didn't hesitate to question Mr. Kent as to his being questioned by the F.B.I.; by the Senate Committee investigating F.H.A. scandals; by the Treasury Department; and, by a Grand Jury (G. 15a-18a).

In addition to Mr. Kent, the Government called Paul Klein, a personal friend of Congressman Powell, who "borrowed" the $3,000; Heinrich Ludeke, a banker whose bank had certified the $3,000 check to Paul Klein; Anna C. Perry, and Harrison Jackson, two officers of the Tenants Protective Association, who testified that they knew nothing at all about the $3,000 transaction; Congressman Powell and Special Treasury Agents Hanley J. Bulson and Morris J. Emanuel.

Throughout all of the foregoing testimony there was no attempt by the Government to show that the defendant had in fact received any money at all. The entire bent of the Government's presentation was to show that the money had actually been received by Congressman Powell (G. 101a-102a, T. 12, G. 60a).

Although the defense maintained a continuing series of objections as to irrelevancy and prejudice (G. 10a, 27a-29a, 38a-39a, 57a, 64a, 70a, 84a, 88a, 96a, 98a, 99a, 101a, 102a, 116a, 143a), and although even the most naive could see that the prosecution's prime interest was Congressman Powell and not the defendant, the Trial Court allowed day after day of this type of testimony on the cynical assurance by the prosecution that ultimately all would be connected with the defendant.

To illustrate the prosecution's use of the trial as a means of politically exposing Congressman Powell, the jury was treated to the spectacle of Congressman Powell attempting to explain to the prosecution who had called him why certain records of his church and of the Tenants Protective Association were missing or had been destroyed. There was not the slightest indication nor did the prosecution offer, that those records had any connection with the defendant (G. 113a-116a).

With regard to the testimony of Paul Klein, also a prosecution witness, and who took the stand on three separate days and testified at great length, the prosecution displayed a completely callous disregard for the defendant's rights.

Before the Treasury Department and before the grand jury, Klein admitted to borrowing the $3,000 in issue (G. 20a-27a, 32a-33a, 36a-51a). Later, but some six months before taking the stand at the trial, Klein told the United States Attorney that his recollection had changed and that he had no recollection of having borrowed money at all (G. 32a, 57a-61a, 146a-150a).

Yet having known for six months that the witness Klein had changed his story, and was claiming no knowledge of the transaction, the prosecution put him on the stand on three separate days, with the only discernible reasons being

the spectacle created by the witness' public confession of his relationship to Congressman Powell and his own moral poverty, or an attempt to lay a foundation for a perjury prosecution.

When, after the first two hours of Klein's testimony, and numerous defense objections, the Trial Court questioned the prosecution as to the purpose of the testimony, the prosecution's answer was that it was trying to refresh the witness' recollection as to the $3,000 (G. 53a-55a). And this after six months prior knowledge that the witness had no recollection at all.

The prosecution conveniently "forgot" that it had told the jury in its opening that Paul Klein had received the money knowing at the time that it made that statement that Klein would refuse to so testify (T. 11-12).

There was absolutely no attempt by the Government to show any connection between the defendant and the $3,000 paid to the Tenants Protective Association.

Mr. Ludeke testified that the bank records showed the $3,000 check to have been payable to Paul Klein, certified and cashed (G. 65a-66a).

Anna C. Perry and Harrison Jackson, two of the officers of T. P. A. with check signing powers (Congressman Powell was the only other person authorized to sign checks) couldn't recall having signed the check to Klein (G. 76a-83a).

Congressman Powell testified that Klein had received the money from T. P. A. with his approval (G. 90a-100a).

Agents Bulson and Emanuel testified that they did not (the inference was "could not") obtain the records of T. P. A. (G. 126a-131a).

None of the witnesses called even remotely suggested that the defendant had received any portion of the $3,000.

The Political Atmosphere At The Trial:

The Court will recall that this trial was conducted against the backdrop of a national election. The trial had opened on October 4th, 1956.

One week later, on October 10th, and in front of the jury, the trial court and the Government engaged in a colloquy relating to the Government's inability to serve a subpoena on Congressman Powell. This was done despite the fact that the entire matter had been previously discussed at the bench, outside the presence of the jury, and no further discussion was required. Yet, in the presence of the jury, the trial court announced that the United States Marshal had, up to that point, been unsuccessful in serving a subpoena upon Congressman Powell, who was to be a witness in the case. The inference that Congressman Powell, the defendant's employer, was "ducking" couldn't have been plainer (T. 661-663).

When counsel for the defendant asked the Trial Court to tell the jury that the court's remarks concerning Congressman Powell were not to be held against the defendant, the court equivocated (T. 663).

On Thursday, October 11, 1956, the following day, and despite the fact that there again had been a full discussion in the robing room, the same performance with regard to the Government's inability to subpoena Congressman Powell was repeated before the jury (T. 664-674).

On the afternoon of Thursday, October 11, 1956, Congressman Powell, from the steps of the White House, announced his support of President Eisenhower's bid for re-election (see any newspaper of that day). Immediately charges and counter charges of "political deal" and political pressure were hurled in every news medium available throughout the length and breadth of the land. In every

one of those charges the tax case against the defendant was prominently mentioned.

On Monday, the first witness called by the Government was Congressman Powell, and as soon as Congressman Powell took the stand as a government witness, the very first question of consequence asked of him by the prosecution was as follows:

> "Q. Now, Dr. Powell, has any pressure in any manner, shape or form, directly or indirectly, been put on you by the White House or anybody in the United States Government in connection with this case?" (A. 131a).

Although the vigorous objection of the defense was sustained, the entire build-up was obviously nothing more than a design on the part of the Government to convert the trial into a side show to the main-ring presidential campaign.

The political nature of the trial had been introduced as early as the prosecution's opening with the statement that:

> "He (Klein) held on to the check for more than three months, did not cash it until a few days before election time in 1952. *Congressman Powell was running for reelection in 1952*" (T. 11-12).

There was not the slightest attempt by the prosecution to show what materiality any election or the "White House" had with the charges against the defendant.

The Striking Out Of All Of The Testimony Relevant To The "Powell Money".

At the close of the Government's case, Judge Dawson made a simple announcement to the jury informing them that he had stricken all of the testimony relating to this

extraneous and highly prejudicial issue. All he said to the jury was the following:

> "That the evidence received was that the check for $3,000 was paid to the Tenants Protective Association to be put in their bank account and thereafter the testimony was that the $3,000 was paid out maybe to Mr. Klein or maybe to somebody else. The testimony is a little vague due to the lapse of memory of Mr. Klein about the situation, but there is no testimony that it was paid out to Mr. Lennon. And, therefore, insofar as the $3,000 is concerned, I find no evidence connecting that $3,000, or any part of it, with Mr. Lennon as an individual. Therefore, I will remove that item from consideration by the jury—I say that at the present time so that the jury will understand that the issue of $3,000 is no longer in this case" (T. 970-971).

Although the prejudicial testimony had run through some two weeks of the prosecution's case, the Trial Court took less than a minute to attempt to wipe the entire spectacle from the minds of the jury.

The Reaction Of The Court Of Appeals To The Prejudice Issue.

In its opinion, the Court of Appeals introduced its consideration of this issue of prejudice with the following statement:

> "Far more substantial is the appellant's assertion of prejudice" (P. 9a).

After reviewing the claim by the defendant concerning the issue of prejudice, the Court of Appeals went on to state:

"It is the appellant's position that the striking of such evidence and the subsequent admonition to the jury by the Court to disregard that evidence were insufficient to dispel the prejudice created during several days of lengthy testimony by a number of government witnesses. There is much merit to this contention. * * *

"Nevertheless, despite our abhorrence of any effort by either party to insinuate politics into a criminal prosecution, we do not believe that this appellant is entitled to a new trial on the facts and circumstances of this case.

"Our reasons for so believing are several. (1) Putting any personal skepticism aside, we are not prepared to label as disingenuous the Government's initial line of proof concerning the Dorrie Miller project" (P. 9a).

The Court of Appeals then went on to list five other reasons for its decision to affirm (P. 10a). These reasons and the error of the Court of Appeals with regard thereto are more fully covered in the argument.

Basically (albeit inferentially), the Court of Appeals, held that the fairness of defendant's trial was immaterial because, in its opinion, the defendant was guilty. Ignored completely in the opinion was the issue of defendant's Constitutional rights.

Ignored completely was the effect on the jury of all the epithetical evidence of political mud and chicanery. Ignored completely was the fact that a piddling case had been magnified into a national political issue in the course of a presidential campaign.

The Error in the Charge With Regard to the Unrelated Acts in Each Count

Each of the counts in the indictment covered two unrelated acts. In essence, each count charged the defendant with having taken improper exemptions and with having failed to report income which he received. The proof with regard to the improper dependents was limited by the Government to the testimony by two witnesses: Vivien Lennon (the defendant's daughter) and Joseph E. Ford. The testimony of these witnesses on these two issues has been previously summarized.

It is quite clear that the proof offered by the Government with regard to the dependents was completely unrelated to the proof offered by the Government with regard to the unreported income. The Government's position was that the defendant had evaded the payment of income tax and that he had done so by means of two unrelated acts. Proof of one of these acts was not proof of the other.

The Trial Court was early and specifically advised of the defendant's request that each of the unrelated items be specifically charged. Thus, in the argument on motions at the close of the Government's case the following statement was made:

> "* * * depending on how you view it, you are going to give, you have to give two separate issues to the jury, and then taking 1949, 50 and 1951, I imagine, although theoretically the question may be sustained on either of those or both, the situation may very readily arise where the jury will say, 'We don't accept the dependency story, we don't think he evaded on the dependency story, but we do think he evaded on Ford,' or vice versa.

> "Now we run into this situation. I think the Court must know by some manner or means whether the jury's finding is on one or both" (A. 144a-145a).

Again, in the requests to charge delivered in writing to the Trial Court several days before the submission of the case to the jury, a division of the two issues and a request that the jury report on each issue was asked. As was stated at that time:

> "Under no circumstances must the use of an omnibus count be permitted to preclude the defendant from a fair trial by rendering difficult, if not impossible, the testing of the jury's verdict" (A. 168a).

Because the alleged acts of falsity in the tax return (dependents and unreported income) were unrelated, and to avoid the possibility that some of the jurors might find guilt on one and the rest of the jurors find guilt on the other and thus bring in a guilty verdict because all of them agreed on one or the other, the Trial Court was asked to charge each single act.

To the extent that the Trial Court refused to separately charge the two unrelated issues, the defendant excepted to the charge (A. 204a).

At the end of several hours of deliberation the jury came back to the Trial Court with two questions:

> "Is the jury to report a single verdict for an entire count or a separate verdict to each part of each count?"

The answer of the Trial Court was:

> "The jury will return a verdict on the count itself, guilty or innocent of the count."

But the jury had a second and more specific question to ask.

> "If the first alternative is true does the jury understand that a unanimous verdict of guilty to any one or more parts of a particular count could be reported to the court as a verdict of guilty to the entire count?"

The Trial Court answered this question as follows:

> "*It is not necessary to decide on each of the items referred to in the bill of particulars;* it is only necessary to decide whether or not on a particular count which relates to a particular year, the Government has proved beyond a reasonable doubt that a substantial portion of the defendant's tax liability has been wilfully and knowingly evaded by the taxpayer" (A. 201a-203a, emphasis supplied).

Exception to this charge was taken (A. 202a).

The jury deliberated for some 25 hours and then proceeded to bring in a verdict of guilty on the first four counts.

At this point it was impossible to determine whether the defendant had been convicted of unreported income; or had been convicted of taking improper dependents; or had been convicted of both.

On review of the matter the Court of Appeals confused the issue raised with the question of duplicitous indictments and held that the indictments were not duplicitous (P. 6a-7a).

There was no issue presented on the appeal to the Court of Appeals concerning duplicitous indictments. As a matter of fact, the main brief to the Court of Appeals went to great lengths to make certain that the issue of du-

plicitous indictments was eliminated from consideration of the case, and specifically stated:

> "It is respectfully submitted that in the case at bar we present a novel and hitherto unresolved issue" (p. 39 of appellant's main brief).

Having held that the indictment was not duplicitous, the Court of Appeals went on to hold as follows:

> "The jury properly could have based its determination of guilt on a finding that in any given tax year the defendant knowingly understated his income or that he knowingly claimed false exemptions, or that he did both in an attempt to evade taxation. Therefore, the trial court correctly refused the defendant's request to separate these issues for submission to the jury" (P. 6a).

It is impossible to tell from the record or from the jury's verdict which of the three alternatives enunciated by the Court of Appeals occurred.

The Court of Appeals did not find that the Trial Court had made any effort at all to assure the defendant that he would not be convicted by combination of minority verdicts. The opinion was silent on this point—a point which had been thoroughly presented by defendant both to the Trial Court and to the Court of Appeals.

Summary of Argument

Point I

The persistent injection of the irrelevant $3,000 issue and the insinuations of political improprieties attendant thereon was prejudicial and deprived the defendant of a fair trial.

The error was "plain error" within the purview of Rule 52, Rules of Criminal Procedure.

Although petitioner contends that the record shows that proper and prompt objection was taken to the prejudicial nature of the evidence as well as its relevance, the error was preserved for review even if no objection as to prejudice had been made; Rule 52, Rules of Criminal Procedure.

The guilt or innocence of the defendant is not the decisive factor to be considered by the Court of Appeals in deciding whether to reverse for prejudice and an unfair trial.

The reasons advanced by the Court of Appeals for failing to reverse for prejudice are at variance with the holdings of this Court as to the proper disposition to be made of a criminal conviction after a prejudicial trial.

Point II

The multiple issues contained in each count were unrelated.

Petitioner requested separate verdicts so as to make certain, as far as possible, that he was not convicted on a compromise verdict.

The charge of the Trial Court encouraged a compromise verdict.

The failure of the Trial Court to charge the multiple issues separately, or to charge in such manner as to discourage and forbid the jury from reaching a compromise verdict, constituted reversible error.

ARGUMENT

POINT I

The Court of Appeals reversibly erred in failing to reverse and remand for a new trial because of prejudice.

The inclusion day after day of testimony with regard to improprieties which may have been committed by Congressman Powell and others in relation to an inter-racial housing project, none of which was connected with the defendant and all of which was taken by the Trial Court subject to connection, created an atmosphere so prejudicial to the defendant as to impress the jury with the fact that the defendant was part of a cabal of impropriety and created an evil cast to all of his actions. The brief and limited comments of the Trial Court in ultimately striking this evidence from the record did not overcome the prejudice suffered by the defendant.

In reviewing the assertions of prejudice raised by the defendant on his appeal, the Court of Appeals wrote in such manner as to indicate an inferential conclusion that prejudice had occurred. The Court of Appeals also came to the conclusion that there was substantial merit to the defendant's contention that the striking of such evidence and attendant admonition to the jury by the Trial Court to disregard that evidence, were insufficient to dispel the prejudice created during several days of lengthy testimony by a number of government witnesses.

In refusing to reverse, however, the Court of Appeals offered six reasons for such refusal. It is respectfully submitted that those reasons do not begin to overcome the fact that the defendant was convicted at the end of a prejudicial trial. His trial was neither fair nor impartial.

It is submitted that whether or not the language of the Court of Appeals be construed as a finding that prejudice had occurred, the defendant's trial was neither more nor less than a political arena with Congressman Powell as the principal attraction.

Under such circumstances, the failure of the Court of Appeals to reverse runs counter to every standard fixed by this Court for the fair and impartial conduct of a criminal trial.

As to Reason Number 6:

This reason is taken out of order because it is, in essence, the basis for the Court of Appeals' refusal to reverse.

The Court of Appeals concluded that:

> "* * * the guilt of the defendant on the basis of admissible evidence, is clear" (P. 10a).

Here again the permissible inference is that the Court of Appeals felt that prejudice had occurred.

It is respectfully submitted that the guilt or innocence of a defendant is not determinative of the issue of whether a conviction should be reversed after a prejudicial trial.

As was stated in *Kotteakos* v. *U. S.*, 328 U. S. 750, 765:

> "The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand."

The extent of the application of the *Kotteakos* case to the proposition advanced in this petition is clearly seen in *Krulewitch* v. *U. S.* 336 U. S. 440. In the *Krulewitch* case

there was involved a simple hearsay statement, prejudicial in its nature, but not even close to the prejudicial and inflammatory political nature of the testimony in the case at bar set as it was against the backdrop of a national election and in which the real object of the trial was an exposing of the principal witness—Congressman Powell. Thus, in the *Krulewitch* case, at page 444, it is stated:

> "It is contended that the statement attributed to the alleged co-conspirator was merely cumulative evidence, that without the statement the case against petitioner was so strong that we should hold the error harmless. * * * In Kotteakos v. United States, 328 U. S. 750, we said that error should not be held harmless under the harmless error statute if upon consideration of the record the court is left in grave doubt as to whether the error had substantial influence in bringing about a verdict. We have such doubt here."

The guilt of a defendant is not an issue to be considered by an appellate court in deciding whether to reverse because of prejudice. To hold otherwise would be to maintain that constitutional safeguards of a fair trial are available only to those whom the Court of Appeals believes innocent.

> *Kotteakos* v. *U. S., supra;*
> *Mesarosh* v. *U. S.*, 352 U. S. 1, 77 S. Ct. 1, 2, 8;
> *Ex parte Quirin*, 317 U. S. 1, 25;
> *Bollenbach* v. *U. S.*, 308 U. S. 539, 614-615.

In the case at bar, the prosecution kept Paul Klein on the stand for hours and examined him as to the reasons for his recanting his prior testimony. At one point, and after hours of testimony by Klein, all of which was admitted over the most strenuous defense objections of prejudice,

the following colloquy took place between the Trial Court and the witness:

> "The Court: * * * Let me ask you this: Have you been under any medical treatment in the last year and a half?
>
> The Witness: Just casual, cold and like that.
>
> The Court: Have you ever been under any psychiatric treatment?
>
> The Witness: Yes, sir.
>
> The Court: When?
>
> The Witness: Using the word loosely, a clinical psychologist, probably 1954 or perhaps early 1955" (G. 61a).

What difference is there between Klein who recanted his Grand Jury testimony while on the stand, and Mazzei, who in the *Mesarosh* case later showed himself to be so irresponsible as to make his prior testimony in that case suspect?

The spectacle of Klein testifying to his devotion to Congressman Powell, avowing his friendship for the defendant, and recanting his prior sworn testimony and statements was a revolting and sordid spectacle.

Yet it didn't end there. Days later, Paul Klein was recalled to go through the whole sorry business again (G. 143a-150a). The inference was clear that in some way the defendant was involved in the original Grand Jury testimony given by Klein and which he disavowed at the trial. Klein's testimony tainted the defendant in the eyes of the jury even though that testimony did not relate to the defendant's guilt or innocence.

Comparing then the prejudicial evidence to the issue of guilt, what effect did the prejudicial evidence have on the

jury's consideration of the counts upon which it convicted the defendant?

Both in logic and as held by this Court, there is no relationship between guilt and a fair trial. The right to the latter cannot be influenced by the fact of the former.

As to Reason No. 1:

Here the Court of Appeals clearly and unusually placed on record the personal skepticism of its members as to the good faith of the Government in presenting the prejudicial $3,000 issue. Essentially the Court argued that although it was personally skeptical of the Government's good faith in presenting such issue it was not prepared to label this prejudicial line of proof as having been presented in bad faith.

Although there is nothing in the record to support it, the Court of Appeals speculated that at the beginning of the trial the prosecution "believed it could prove that the defendant personally pocketed all or some of the $3,000 allegedly paid to the Tenants Protective Association by David Kent."

The prosecution at no time believed it could prove nor did the prosecution ever intend to prove that the defendant personally pocketed all or some of the money. As a matter of fact, it baldly stated to the Trial Court and to the jury that "the money was actually to be Congressman Powell's to dispose of" (T. 11).

The only theory which the prosecution ever attempted to advance in support of this entire issue was the fanciful idea that the money was to be charged as income to the defendant even though the money went to T. P. A. and inferentially was received by Congressman Powell via Klein.

"The Court: None of that ($3,000) was proved to have gone personally to Mr. Lennon, was it?

Mr. Bolan: *Yes, your Honor, that is correct,* but if I may say there are numerous cases which hold that *it is not necessary for the taxpayer to receive the income at all* * * *" (A. 136a).

Contrary to the Court of Appeals, there was no issue that the money was not paid to the Tenants Protective Association. The proof adduced by the Government at the trial both by bank records and the testimony of its own witnesses established conclusively that the money was actually paid into the account of the Tenants Protective Association and never to the defendant.

In the face of the Government's positive assertion that it did not offer any proof that the defendant received any of that money, the conclusion by the Court of Appeals that the Government believed it could prove that the defendant "pocketed" all or some of the money fails by the wayside. There is nothing in the record to support such a conclusion. As a matter of fact the Government proposed to prove that the money was pocketed by Congressman Powell.

Where the issue is prejudice to a defendant, the Government has the burden of proving that the defendant had a fair trial. The subsisting personal skepticism of the Court of Appeals as to the Government's good faith in presenting a highly prejudicial line of proof, a skepticism which that Court saw fit to memorialize in its opinion, clearly establishes the failure of the Government to sustain its burden of proving that the defendant had a fair and unprejudiced trial.

As was stated in *Kotteakos* v. *U. S.*, *supra:*

> "If the error is of such a character that its natural effect is to prejudice a litigant's substantial rights, the burden of sustaining a verdict will, notwithstanding this legislation, rest upon the one who claims under it."

Assuming *arguendo* that the prosecution was acting in good faith, neither the good nor the bad faith of the prosecution is a determining factor in deciding whether a trial has been had in accordance with, and under the limitation of constitutional safeguards. The issue is: "Did the prejudice seriously affect the fairness, integrity or public reputation of this trial?" Prejudice, whether it be offered in the guise of good faith or of bad faith, is prejudice nonetheless.

U. S. v. *Atkinson*, 297 U. S. 157, 160;
Bollenbach v. *U. S.*, *supra*.

In the face of its oft stated position that "its duty is not to convict but to see that justice is done," the Government's procedure in this case leaves much to be desired.

Holland v. *U. S.*, 348 U. S. 121, 136.

As to Reason No. 2:

This Court is respectfully referred to the fact that persistently throughout the presentation of this prejudicial testimony, there was a continuing objection by the defense and a continuing acceptance by the Trial Court of the prejudicial testimony as offered by the Government on the ground that at some point in the future all of the testimony would be connected with the defendant. The prejudicial testimony was never connected with the defendant.

In addition, counsel for the defendant made it perfectly clear at the trial that he regarded the testimony on the

Powell issue as being prejudicial as well as irrelevant (see "Statement of Case", *supra*).

Beginning with the Kent testimony, through the Klein testimony, and continuing right on through the testimony of all of the other witnesses, the objection of prejudice, as well as the objection of irrelevance, was made. More important, however, is the fact that even if the objection of prejudice had not been made, the error was preserved for review and the failure to object cannot possibly affect the defendant if in fact prejudice occurred.

> Rule 52, Rules of Criminal Procedure;
> *United Brotherhood* v. *U. S.*, 330 U. S. 395, 412;
> *U. S.* v. *Atkinson, supra.*

As to Reason No. 3:

The failure of the defendant to move for a mistrial on the ground of prejudice in nowise mitigates the prejudicial nature of the trial or the duty of the Court of Appeals to reverse and remand for the prejudice that had in fact taken place.

> Rule 52, Rules of Criminal Procedure;
> *U. S.* v. *Atkinson, supra;*
> *United Brotherhood* v. *U. S., supra;*
> *Lash* v. *U. S.*, 221 F. 2d 237;
> *U. S.* v. *Asendio*, 171 F. 2d 122;
> *Robertson* v. *U. S.*, 171 F. 2d 345.

The Trial Court was on full notice that defendant objected to all of the prejudicial testimony both on the ground of irrelevancy as well as that of prejudice.

Objection and exception to the offending evidence having been promptly taken, the error was preserved for review regardless of any motion for a mistrial.

As to Reason No. 4:

It is categorically stated that the Court of Appeals is in complete and obvious error in advancing this reason.

Contrary to the statement by the Court of Appeals, there was no interrogation of Dr. Powell by defense counsel even remotely approaching the highly inflammatory, improper and prejudicial question *asked by the Government of its own witness Congressman Powell:*

> "Now, Mr. Powell, has any pressure, in any manner, shape, or form, directly, or indirectly, been put on you by the White House or anybody in the United States Government in connection with this case?"

The only justification ever advanced by the prosecution was the statement to the Court of Appeals that:

> "* * * the United States Attorney's purpose in asking the question was to make it clear that Powell was not involved in any political improprieties in connection with the trial of the case" (Government Brief in Court of Appeals, p. 27).

The "reason" justifying the question is as disingenuous as the question itself.

The political accusations that Congressman Powell had made a "deal" to save his own neck had occupied all news media for days preceding his appearance on the stand as a prosecution witness. Whether the jury was ignoring these stories was problematical at best. How the Democrats on the jury reacted to the defection of Congressman Powell or how the Republicans on the jury reacted to their new-found ally will never be known. Certainly the dignity of the Government of the United States required the prosecution to exert every effort to keep politics out

of the courtroom. Not only was no such effort exerted but the prosecution encouraged the jury to give vent to its political emotions by injecting Congressman Powell's politics into the trial in its very opening and as soon as he appeared on the stand.

The Trial Court recognized the situation and in sustaining defense objections to the offensive question, stated:

> "This is purely a tax evasion trial and there are no politics going to enter into this case as long as I am sitting on this Bench" (G. 84a).

From the beginning of the trial it was obvious that the prosecution was more interested in Congressman Powell than in the defendant.

On the other hand, the questioning by defense counsel of Congressman Powell as to whether he had spoken to anyone in the Government prior to taking the stand, bore absolutely no relationship to the question that was asked by the prosecution.

Congressman Powell was called by the Government as its witness. He was interrogated on the stand as to the Tenants Protective Association; his association with David Kent; his association with Paul Klein; his association with the defendant; his knowledge of Tenants Protective Association; the destruction of Tenant's Association records; the filing of tax returns by Tenants Protective Association, etc., etc. About many matters Congressman Powell was vague, uncertain and hesitant. His very vagueness, uncertainty and hesitancy was damaging to the appellant, for he was appellant's employer and alleged friend and he was testifying as to matters concerning which the appellant was criminally charged. His vagueness, his uncertainty and his hesitancy gave the appearance of reluctance, a reluctance to testify against appellant (G. 83a-118a).

Was it not logical then, to ask on cross-examination in an effort to show that the Government had never investigated Congressman Powell's knowledge of the facts, was conducting a political exposé, was dealing with a witness who was unprepared and surprised, and to show the prosecution's complete irresponsibility:

> "Q. Dr. Powell, up until your appearance on the stand this morning, has anyone from the government ever attempted to talk to you *concerning your knowledge of these matters that you were interrogated on this morning?* A. No one, sir" (G. 118a). (Emphasis supplied.)

Can anyone capable of rational thought conclude that the foregoing question is the same as the question by the prosecution as to "White House pressure"?

If there is even a lingering doubt at this point that Congressman Powell was the real "defendant" in the trial, the following colloquy is revealing:

(Paul Klein, recalled by the Government)

> "*By Mr. Bolan*: * * *
>
> Q. Have you done anything to refresh your recollection since that meeting with me in my office? (The meeting took place in March, 1956.) A. Yes, sir.
>
> Q. What did you do? A. You suggested that I speak to Congressman Powell——
>
> Mr. Feldman: Your Honor, I object. How is this binding on the defendant?
>
> The Court: I will allow that. You say you talked to Congressman Powell?
>
> The Witness: Yes.
>
> The Court: When did you talk to him?

The Witness: Soon after the conversation with Mr. Bolan.

The Court: And when was that?

The Witness: As a rough guess, if I saw Mr. Bolan in mid-March, it was by the end of March, as soon as I could get him between his Washington schedule.

The Court: You talked to Congressman Powell, all right?

The Witness: Yes.

By Mr. Bolan:

Q. And what transpired?

Mr. Feldman: Well, your Honor, I am certainly going to object to any conversation between the witness and the Congressman as having no effect or not being binding on my client.

The Court: *Well, this is rebuttal.* The Congressman testified yesterday" (G. 147a-148a) (Emphasis supplied.)

Although the objection was vigorously pressed the Trial Court persisted in its ruling and the witness allowed to answer.

Despite the fact that both witnesses were produced by the prosecution on its direct case, the Trial Court allowed Klein to rebut Powell's testimony as if Powell were the defendant testifying in his own behalf.

It is submitted that not only did the defense not ask Congressman Powell any question even remotely approaching the political nature of the prosecution's question, but not a single question was asked him as to whether anyone from the Government had spoken to him relative to his

testifying at the trial. The Court of Appeals erred on all the facts regarding this issue.

As to Reason Number 5:

The instruction to the jury by the Trial Court to disregard the highly prejudical events and testimony, was brief almost to the point of absurdity. As was stated by Mr. Justice Jackson in *Krulewitch* v. *U. S.*, *supra*, at page 453:

> "The naive assumption that prejudicial effects can be overcome by instructions to the jury * * * all practicing lawyers know to be unmitigated fiction."

The inflammatory nature of the offending testimony, the deliberate injection of politics, the sordid spectacle of Klein, all combined to create an atmosphere so highly charged and prejudicial as to require a jury of supermen to be able to disregard it.

Yet, the Trial Court gave only a casual instruction to the jury to disregard the issue.

It is respectfully submitted that none of the reasons advanced by the Court of Appeals satisfy the long standing requirement that a defendant is entitled to a fair, impartial and unprejudiced trial. The issue is not whether an appellate court can sieve out sufficient unprejudicial evidence to warrant the conclusion that the defendant was guilty. The absolute right is that a defendant must have an unprejudiced trial.

As was stated in the *Bollenbach* case, *supra*, at page 615:

> "In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be sup-

posed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process might be."

And again, in *Ex parte Quirin, supra*, at page 25:

"We are not here concerned with any question of the guilt or innocence of petitioners. Constitutional safeguards for the protection of all who are charged with offenses are not to be disregarded in order to inflict punishment on some who are guilty."

Substantial prejudice warrants reversal without even consideration of the record and without consideration of guilt.

U. S. Constitution, 5th and 6th Amendments;
Mesarosk v. *U. S., supra.*

POINT II

The presence of multiple and unrelated issues in each count required an instruction designed to avoid a compromise verdict.

1. **The defendant was entitled to a special verdict on each issue or, in the alternative, a charge appropriate to discountenance, discourage and forbid the jury from reaching a compromise verdict.**

2. **The failure of the Trial Court to adopt either of the foregoing alternatives, coupled with a charge which encouraged a compromise verdict, constituted reversible error.**

The question raised by this point is novel and has never been decided by this Court.

At issue is a defendant's right to receive either separate verdicts or a clear and unequivocal instruction in a situation where multiple and unrelated issues are contained in each count of an indictment.

It is respectfully submitted that absent any rule against special verdicts, the defendant was entitled to an instruction calling for a separate verdict and the failure to grant the request therefore deprived the defendant of a fair trial.

It is further submitted that the failure of the Trial Court to clearly and unequivocally separate the two issues contained in each count so as to make certain, so far as was possible, that the jury did not reach a compromise verdict, also constituted reversible error.

The Court of Appeals, in its determination of the issue raised by this point, misconstrued the defendant's position, and in so doing concluded that the defendant was

objecting that each count of the indictment was duplicitous. Actually, the defendant at no time raised the issue of a duplicitous indictment and, as a matter of fact, went to considerable pains to point out to the Court of Appeals that such was not the question being raised.

26 U. S. C. A. 145(b) describes the crime as being the wilful *attempt* to evade taxes. The definition of "attempt" or the manner in which such attempt can be made, or the number of attempts which may be made in any given year, is not set out in the statute.

It follows that for any given year a taxpayer may be charged with an attempt to evade taxes in a number of ways. Thus, as in the case at bar, he may be charged with filing a return which is false in two unrelated aspects, *i.e.*, unreported income and improper dependents.

In determining the guilt or innocence of a taxpayer so charged, the jury must unanimously agree that the return was false in at least one of the aspects. The reason for this is self-evident. If, hypothetically, the first six of the jurors believe the return to be false for unreported income, then the other six must of necessity believe the contrary. Similarly, if the second six believe the return to be false for improper dependents, then the first six must of necessity believe the contrary. The fact that there are twelve jurors who, for one reason or the other, are unanimous in their belief that the defendant is guilty of an attempt is immediately counterbalanced by the fact that the same twelve jurors are simultaneously unanimous in their belief that the defendant is also innocent of an attempt, for one reason or the other.

Was the return false for unreported income? The defendant had the absolute right to have the jury unanimously agree before finding him guilty.

Was the return false as to dependents? The defendant had the absolute right to have the jury unanimously agree before finding him guilty.

But, if only one juror believed the defendant was innocent of the dependency charge, and only another juror believed he was innocent of the unreported income charge, then the conviction of the defendant would be a complete violation of his rights.

Rule 31, Rules of Criminal Procedure.

As has been set forth in the statement of the case, *supra*, the two issues contained in each of the counts were completely unrelated. Proof of one was not proof of the other. Guilt of one did not even imply guilt of the other.

Several days prior to the Trial Court's charge to the jury, the defense submitted written requests to charge. The very first of such requests included the following statement:

> "To avoid such a consequence the Court is respectfully requested to instruct the jury to advise the Court as to its finding on each of the items in each of the counts as well as to its general verdict on each count. In this manner the Court will be able to determine whether the general verdict reached was so reached within the limits of the Court's charge.
>
> * * * * *
>
> Under no circumstances must the use of an omnibus count be permitted to preclude the defendant from a fair trial by rendering difficult, if not impossible, the testing of the jury's verdict" (A. 168a).

Instead the Trial Court charged only the general verdict as follows:

> "You will, therefore, with respect to each count return a verdict of guilty or not guilty. If you find that the Government has established, beyond a reasonable doubt, that the defendant, with respect to a particular year, had knowingly and wilfully understated his income, or had knowingly and wilfully claimed as dependents persons who were not his dependents, and if you conclude that the Government has established, beyond a reasonable doubt, that the defendant did this knowingly and wilfully with an attempt to evade and defeat part of the income tax owing by him, then you may find the defendant guilty on that count of the indictment to which those facts relate" (A. 192a).

Exception was properly noted to the charge (A. 204a).

The unitary nature of the instruction was such as to leave in doubt how the jury was to treat with the specific and unrelated issues in each count.

After 3 hours of deliberation, the jury returned to ask the two questions previously set out in the "Statement of Case" at page 19 herein.

It was the response to those two questions that left the jury free as air. When the Trial Court charged that:

> "It is not necessary to decide on each of the items referred to in the bill of particulars; it is only necessary to decide whether or not on the particular count which relates to a particular year, the Government has proved beyond a reasonable doubt that a substantial portion of the defendant's tax liability had been wilfully and knowingly evaded by the taxpayer" (A. 202a).

the Trial Court in its last and decisive word to the jury actually encouraged a compromise verdict.

The jury was encouraged to take a broad overall approach. In effect, they were told that if all twelve could agree that he was guilty of something then they were to convict.

It is respectfully submitted that the specific ruling was in error, and the Court of Appeals reversibly erred for failing to reverse and remand therefor.

As was stated in *Bollenbach* v. *U. S., supra*, at page 612:

> "Particularly in a criminal trial, the judge's last word is apt to be the decisive word. If it is a specific ruling on a vital issue and misleading, the error is not cured by a prior unexceptionable and unilluminating abstract charge."

The odor of compromise is all pervading in the case at bar. The facts involving the jury's deliberations, the time involved in the deliberations, the impending weekend, and the strong suggestion by the Trial Court that the jury should reach a verdict all lead to the conclusion that a compromise verdict may have occurred.

The jury got the case on Thursday, October 18, 1956, at 11:35 A.M. after two weeks of trial.

Three hours later, at 2:25 P.M. they received the specific ruling previously noted.

At 11:05 P.M., the Trial Court recalled the jury to ask whether they wished hotel accommodations. In the course of these remarks, the Court stated:

> "Deliberation and discussion is a great thing in our jury system with an attempt to reach a verdict. Of course, if you do not reach a verdict it simply

means that the case has to be retried again with the expense and delay to all, so if the jury will retire again and let me know what you want to do.

Mr. Feldman: I am sure your Honor did not mean to indicate that any juror should reach a verdict just for the purpose of saving expense and avoiding delay.

The Court: No, deliberation and discussion, and be careful in reaching a verdict, which should be the honest verdict of the jurors, as that is always desirable" (A. 206a).

At 11:35 P.M. the jury was locked up for the night.

On Friday, they resumed their deliberations at 10:00 A.M. and returned their verdict at 12:50 P.M.

In all, more than 25 hours had elapsed.

If the jury had not reached agreement when they did they would have been locked up again and perhaps over the week-end.

As was stated in *Bollenbach* v. *U. S.*, *supra*, at page 612:

> "An experienced trial judge should have realized that such a long wrangle in the jury room as occurred in this case would leave the jury in a state of frayed nerves and fatigued attention, with the desire to go home and escape overnight detention, particularly in view of the plain hint from the judge that a verdict ought to be forthcoming."

By Friday, compromise was the order of the day and the charge did nothing to discourage it.

It is self-evident that the practice of including multiple and unrelated issues in a single count of an indictment works a severe prejudice on a defendant. It cannot be presumed that a jury composed of laymen is capable of

maintaining such singleness of mind as to enable it to lay aside all evidence unrelated to a particular issue once such evidence is before it. As a matter of fact, it is fair to state that such a task is difficult even for an experienced jurist. It is unreasonable to expect such an ability from a jury.

In the case at bar, the Trial Court had in its possession, well in advance of its instruction to the jury, a written request to separate the two unrelated issues. The request was proper and consistent with the requirements of a fair trial to the defendant.

With regard to separate verdicts, there has been no statement by this Court, either favoring or rejecting such verdicts in criminal cases. To the extent that lower courts have expressed adherence to a rule that special verdicts are not to be countenanced in criminal actions, research indicates no foundation whatever for such pronouncements.

With regard to an expression of opinion by this Court concerning separate verdicts, the most recent statement appears in *Stein* v. *People of the State of New York*, 346 U. S. 156.

In the *Stein* case, involved was the submission of an issue involving a coerced confession along with the general issue of guilt of the crime charged. In discussing this type of submission the majority stated at page 177 (and the dissents took no issue therewith):

> "Petitioners suffer a disadvantage inseparable from the issues they raise in that this procedure does not produce any definite, open and separate decision of the confession issue. Being cloaked by the general verdict, petitioners do not know what result they really are attacking here. For all we know, the confession issue may have been decided in their

> favor. The jury may have agreed that the confessions were coerced, or at least that the State had not met the burden of proving beyond a reasonable doubt that they were voluntary."

In writing on the problem involved, this Court, at p. 177, took particular notice of the practical problems in a multiple submission.

> "Perhaps a more serious practical cause of dissatisfaction is the absence of any assurance that the confessions did not serve as makeweights in a compromise verdict, some jurors accepting the confession to overcome lingering doubt of guilt, others rejecting them but finding their doubts satisfied by other evidence, and yet others or perhaps all never reaching a separate and definite conclusion as to the confessions but returning an unanalytical and impressionistic verdict based on all they had heard."

Before reaching the question of separate verdicts, this Court took particular pains to set out the minimum requirements for an instruction to the jury where multiple issues are to be submitted, thus, and at p. 178, this Court stated:

> "Courts uniformly disapprove compromise verdicts but are without other means than admonitions to ascertain or control the practice. Defendants, when two or more issues are submitted, are entitled to instructions appropriate to discountenance, discourage, and forbid such practice."

This Court then went on to consider special verdicts in criminal cases and stated with regard thereto, at p. 178:

> "But no general practice of these techniques has developed in American criminal procedure. Our own Rules of Criminal Procedure make no provision

for anything but a general verdict. Indeed, departure from this has sometimes been resisted as an impairment of the right to trial by jury, see *People* v. *Tessmer*, 171 Mich. 522; 137 N. W. 214, 41 L. R. A., N. S., 433; *State* v. *Boggs*, 87 W. Va. 738, 106 S. E. 47, 18 A. L. R. 1360, which usually implies one simple general verdict that convicts or frees the accused." *

Such opposition as seems to exist in the lower courts to the special verdict seems to be directed to the use of the special verdict to establish a factual finding vital to the single issue in a count. No one has written with regard to the use of the special verdict where multiple issues are contained in a single count.

Since each of the unrelated issues standing alone would, if proved, constitute the crime charged (an attempt to evade), the special verdict was not only appropriate, it was mandatory if the trial was to be fair.

This Court has at no time ruled that special verdicts are improper. As a matter of fact, in the past this Court has treated with special verdicts in criminal cases without adverse comment thereon:

U. S. v. *Jackalow*, 66 U. S. 484, 1 Black 484, 17 L. Ed. 225.

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*The doctrine outlined in *People* v. *Tessmer, supra,* finds its origin in *People* v. *Marion,* 29 Mich. 31, 40 as followed by *People* v. *Roat,* 117 Mich. 578, 582, 76 N. W. 91. The only reason advanced to support the position taken was that to permit a special verdict would be "revolutionary".

State v. *Boggs,* cites no authority for its holding other than Clementson on Special Verdicts, page 49, to the effect that interrogatories to a jury would "impair the right of trial by jury secured by the Constitution."

The expression of the alleged "rule" that it is not the practice of the federal courts in criminal cases to call for special verdicts has its derivation in nothing more than a passing obiter appearing in an early criminal case; *U. S.* v. *Watkins*, decided in 1829, 28 Fed. Cases 419, Fed. Case No. 16, 1649, 3 Cranch C. C. 441, 3 D. C. 441.

In the *Watkins* case, the relied on statement is as follows, appearing in 28 Fed. Cases 484:

> "That the only way in which the jury can decide the law of a case is, by giving a general verdict, which necessarily involves the question of law as well as of fact."

Thereafter we find the following statement in *Anderson* v. *U. S.*, 273 F. 677:

> "It is not the practice of the federal courts in criminal cases to call for special verdicts."

The *Anderson* case cites as authority for its holding, the case of *United States Mutual Accident Association* v. *Barry*, 131 U. S. 100. The *Mutual Accident* case was a *civil cause* involving the application of Wisconsin law on the issue of whether a special question could be submitted to a jury after a general verdict had been reached.

There is nothing about the special verdict which makes it inapplicable to a criminal cause under appropriate circumstances. Certainly whether a special verdict should be submitted to a jury depends entirely upon the issues involved.

The basic responsibility for the disability to a defendant suffered in submitting multiple issues in a single count lies with the United States Attorney in whose district the Grand Jury indicts. Although it is true that a Grand Jury

acts independently in determining whether an indictment should issue, only the most naive would assume that the ultimate indictment is drawn by the Grand Jury itself. Actually, the indictment is drawn by the United States Attorney in charge of the matter at the time of its presentation to the Grand Jury. Prime responsibility for the inclusion of multiple issues in a single count must of necessity rest with the Government.

In the case at bar there was nothing which prevented the United States Attorney from setting forth each separate issue in a separate count. Had this been done, the verdict of the jury could have been tested both by the Trial Court and the Court of Appeals as against the evidence submitted.

It is respectfully submitted that so long as United States attorneys persist in issuing omnibus counts, then protection of the defendant's right to a fair trial requires acceptance of the principle of the special verdict—especially where the defendant demands it. Certainly there is no imposition on the jury nor any diminution of its function. As a matter of fact, it would make the task of the appellate courts in a criminal case far easier, for it would permit more precise review where multiple issues are involved.

Further, the defendant would have had the benefit of knowing that a unanimous verdict was reached if on any particular issue a verdict of guilty was rendered. On the other hand, the defendant would have had the assurance that every effort had been made to avoid the possibility of a compromise verdict.

It is interesting to note at this point that the separate verdict has inferentially been spoken of with favor. Thus, in *Sullivan* v. *U. S.*, 222 F. 2d 56, where the count involved included multiple issues of far greater interralationship

than that in the case at bar, the Court of Appeals stated, in affirming:

> "It will suffice to say that * * * counsel for the appellant did not ask the Court below to submit the case to the jury for a special verdict, and that instead of objecting to the charge before the jury retired to consider the verdict as required by Rule 30 of the Federal Rules of Criminal Procedure, 18 USCA, he said to the court at that time 'I am satisfied.'"

The only case in which a special verdict was held to constitute reversible error is *Gray* v. *U. S.*, 174 F. 2d 919 (8 Cir.), cert. den. 338 U. S. 848. In the *Gray* case, the basic reason advanced by the Court of Appeals for reversing was the absence of a pronouncement by this Court, and was stated as follows:

> "It is not the function of the courts subordinate to the Supreme Court to introduce innovations of criminal procedure. The action of the court requiring the separate verdicts duly excepted to by appellant constituted error."

It is vital to note that in the *Gray* case the defendant objected to the submission of the special verdict to the jury and took the position of an all or nothing verdict on the count.

It is submitted that giving to trial judges the right to submit multiple issues by way of special verdicts will do much to alleviate the prejudicial condition created by the use of omnibus counts and will thus enhance and improve the effieient administration of justice in the federal courts.

It is respectfully submitted that the defendant was entitled to have a charge of such clarity as to discourage the possibility of a compromise verdict. The inadequacy of the charge constituted error.

The defendant was also entitled to have a separate resolution of each unrelated issue in each count. The failure to call for a special verdict on each unrelated issue in each omnibus count worked a still further prejudice in a trial in which prejudice ruled the roost.

CONCLUSION

It is accordingly prayed that the writ be granted.

Acy Lennon,
Petitioner, Pro Se.

Leonard Feldman,
64 Wall Street,
New York 5, N. Y.,
Counsel for Petitioner.

APPENDIX

Opinion

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 255-256—October Term, 1956.

(Argued March 7, 1957 Decided June 12, 1957.)

Docket Nos. 24411-24412

—o—

UNITED STATES OF AMERICA,

Appellee,

—v.—

ACY LENNON,

Defendant-Appellant.

—o—

Before:

MEDINA and WATERMAN, *Circuit Judges,*
and GALSTON, *District Judge.*

Appellant, prosecuted for willfully attempting to evade income tax payments, was tried by jury and convicted in the District Court, Southern District of New York, Dawson, *J.*, and he appeals. Judgment of conviction affirmed.

PAUL W. WILLIAMS, U. S. Atty., S. D. N. Y. (Thomas A. Bolan, Asst. U. S. Atty., of counsel), *for appellee.*

LEONARD FELDMAN, New York City, *for defendant-appellant.*

WATERMAN, *Circuit Judge*:

The defendant, Acy Lennon, appeals from a judgment of conviction on four counts of a six count indictment. He was charged with willfully attempting to evade income taxes by filing false returns for the calendar years 1949 to 1954 in violation of 26 U. S. C. A. §145(b), Int. Rev. Code of 1939.[1] In each of the four counts on which the jury returned a verdict of guilty, covering the years 1949 to 1952, the defendant was charged with knowingly understating his net income and with claiming two exemptions to which he knew he was not entitled.

At the trial evidence was adduced tending to establish the following facts: The defendant, during the years here in question, was employed as a Congressional secretary by Congressman Adam Clayton Powell, Jr., of New York City. During this period he also received income as a recreational director for the Abyssinian Baptist Church, of which Dr. Powell was and is the minister. In addition, the defendant owned and operated a candy and stationery store, but he reported a loss from that enterprise during each of the four years here in issue.

On his income tax returns for the years 1949 to 1952 Lennon reported his income from the House of Representatives and from the Abyssinian Baptist Church. In addition, for the year 1949 he reported income of $280 from the "Citizens Comm." and $367.71 from "telephone & commissions"; in 1950 he reported $132 from "concessions tele-

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[1] The pertinent provision of 26 U. S. C. A. §145(b) reads as follows:

"* * * any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, together with the costs of prosecution."

phone" and $160 as a "rebate from ice cream." No other income was reported by appellant for the years 1949 to 1951. For the year 1952 he reported additional income of $1280 from "Commissions, Publications, etc." apparently derived from a tax service operated by the defendant in that year.

After offering the defendant's tax returns in evidence, the Government called as a witness one Joseph E. Ford, who testified that he formerly had operated an income tax service and that he had employed the defendant as a bookkeeper and interviewer from 1941 to 1951. He further testified that he had paid the following sums to the appellant for his services during the years here in issue: $1600 in 1949, $1700 in 1950, and $1600 in 1951.

The Government also introduced the testimony of one David Kent to the effect that in 1952 he had given the defendant a check for $3000 payable to the Tenants Protective Association, allegedly a non-profit organization formed to assist residents of the Harlem area of New York City in obtaining low rent housing. This payment was allegedly for commissions earned by that organization for the sale of apartments in the Dorie Miller interracial housing project. Congressman Powell was the president of this organization, and the defendant was connected with it as either an officer or an employee. The Government attempted to prove that the defendant ultimately received all or part of the $3000 as personal income. At the close of the Government's case, however, the trial judge ordered the lengthy testimony introduced in support of this contention to be stricken from the record because the Government had failed to establish that the defendant had ever pocketed any part of the controversial $3000.00.

On his returns for the years 1949 to 1952, the defendant had claimed six exemptions, including two dependent sons named "Acy, Jr." and "William." The spaces provided

for the addresses of these two dependents, in the event their addresses differed from that of the defendant, were left blank.

The Government called as one of its witnesses Vivian Della Lennon, a daughter of the defendant, who at the time of the trial in 1956 was 22 years of age. Miss Lennon testified that she had always lived with her parents and that she had no knowledge of having any brothers, except for vague "rumors" that her father had sired two illegitimate sons. Witness Ford, who claimed that he had seen the defendant almost daily while Lennon was allegedly in his employ, testified that the defendant had never mentioned the existence of any sons; and that he, Ford, although he knew Mrs. Lennon and had visited the Lennon home, had not seen or heard of any sons of the defendant.

The jury returned a verdict of guilty on the first four counts, covering the years 1949 to 1952. A verdict of not guilty was brought in on the fifth count, which covered the year 1953, and the jury disagreed on the sixth count, applicable to 1954.

On appeal the defendant urges a number of grounds for reversal, most of which are totally devoid of merit. Several warrant extended discussion, but we find no error in the proceedings below justifying a reversal. We therefore affirm the judgment of conviction.

I

The appellant first argues that the Government neither charged nor proved acts sufficient to constitute a violation of 26 U. S. C. A. §145(b). It is his contention that the filing of a false and fraudulent return, without more, cannot be the basis of a felony conviction under section 145(b), but, at most, constitutes a misdemeanor under 26

U. S. C. A. §3616(a), Int. Rev. Code of 1939.[2] This argument has already been considered and rejected by this Court, see *United States* v. *Moran*, 236 F. 2d 361 (2 Cir. 1956), *cert. denied*, 352 U. S. 909; *United States* v. *Costello*, 239 F. 2d 177 (2 Cir. 1956), *cert. granted*, 352 U. S. 988 (1957), and the Supreme Court has recently held that section 3616(a) does not apply to the evasion of the income tax. *Achilli* v. *United States*, U. S. , decided May 27, 1957. Hence the appellant's position is untenable.[3]

II.

The defendant also contends that it was prejudicial error for the trial court to submit to the jury, as single counts for each year in question, the combined issues of understatement of income and of fraudulent exemptions. It is argued that these two issues involve entirely unrelated matters, and therefore they should have been separated

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[2] The pertinent provision of 26 U. S. C. A. §3616(a) reads as follows:

> "Whenever any person—
>
> "(a) Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; * * *
>
> * * * he shall be fined not exceeding $1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution."

[3] The appellant attempts to rely on *Spies* v. *United States*, 317 U. S. 492 (1943), but there the Supreme Court held only that the *failure to file an income tax return and to pay income taxes, without more,* could not constitute a felony under 26 U. S. C. A. §145(b), Int. Rev. Code of 1939. Here the appellant was charged with knowingly and willfully filing false and fraudulent returns in an attempt to evade income taxes.

for individual ascertainment of guilt or innocence by the jury. But, in so asserting, the appellant misconceives the offenses for which he was being tried. The felonious act in issue for each year named in the indictment was the willful filing of a false and fraudulent income tax return. A single return, of course, could be falsified in an unlimited number of particulars. The filing of such a return, however, constitutes but a single act within the meaning of section 145(b). Hence the indictment was not "duplicitous," because each count charged only one criminal violation. See 11 Cyc. Fed. Proc. §42.109 (1952).[4] The issues of understatement of income and fraudulent exemptions were set forth in each count only as different methods by which a single offense may have been effectuated. The jury properly could have based its determination of guilt on a finding that in any given tax year the defendant knowingly understated his income, or that he knowingly claimed false exemptions, or that he did both, in an attempt to avoid taxation. Therefore the trial court correctly refused the defendant's request to separate these issues for submission to the jury.

III

The appellant next urges several fatal defects in the Government's case as grounds for reversal. He contends that, although the Government may have introduced testimony tending to prove that the defendant was not supporting two sons who resided in his home, it did not

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[4] "Duplicity in an indictment means the charging of two or more separate and distinct offenses in one count, not the charging of a single offense into which several related acts enter as ways and means of accomplishing the purpose." *Frankfort Distilleries, Inc.* v *United States*, 144 F. 2d 824, 832 (10 Cir. 1944), *reversed on other grounds*, 324 U. S. 293. See also *Empire Oil & Gas Corp.* v. *United States*, 136 F. 2d 868, 872 (9 Cir. 1943); *United States* v. *Crummer*, 151 F. 2d 958, 963 (10 Cir. 1945), cert. denied, 327 U. S. 785.

negative, by competent evidence, the possibility that the defendant was actually entitled to a total of six exemptions, as claimed in his returns for the years 1949 to 1952. The defendant's theory is that a "mere misdescription" of permissible exemptions is no evidence of an attempt to evade taxation.

We find this argument unpersuasive. The Government, once having shown the non-existence of the particular dependents claimed by the defendant, "is aided by the presumption that the deductions and exclusions listed by a taxpayer in his return are all that exist. This presumption is based upon reasonable experience (taxpayers would not knowingly fail to report all valid deductions), and has the effect of shifting the burden of going forward with the evidence to the defendant, when the Government has shown unreported income." *United States* v. *Bender*, 218 F. 2d 869, 871-72 (7 Cir. 1955), *cert. denied*, 349 U. S. 920. See also *United States* v. *Link*, 202 F. 2d 592, 593-94 (3 Cir. 1953). Cf. *Clark* v. *United States*, 211 F. 2d 100, 103 (8 Cir. 1954). The defendant was unable to show at the trial that he was entitled to any exemptions not listed in his returns, and therefore the court properly submitted to the jury the question of whether the defendant had knowingly claimed false dependents in an attempt to evade taxation.

Nor was it necessary for the Government to introduce independent evidence, apart from the defendant's tax returns, to show that the defendant had not reported his alleged income from Ford's tax service. The returns spoke for themselves. The only major sources of income listed by the defendant for the years 1949 to 1951, when he was allegedly employed by Ford, were the House of Representatives and the Abyssinian Baptist Church. Congressman Powell, the pastor of the latter, testified that Ford's tax service was not conducted under the aegis of his church.

The defendant makes an unconvincing effort to show that the income from Ford, if any, was included in the substantial gross revenues of his stationery and candy store, which annually reported a net loss during the period here in question. This claim is not plausible, however, because there appears to be no relationship in fact between the two enterprises. Thus the Government made out a sufficient case to submit to the jury the questions of whether the defendant received income from Ford, and whether he intentionally failed to report that income in an attempt to avoid taxation.

IV

Evidence of both tax evasion and willfulness was ample. On appeal the defendant strenuously attacks the credibility of Ford, upon whose testimony, along with several canceled checks made out to the defendant, the Government principally relied to prove that Lennon received unreported income from Ford's tax service. Our attention has been directed to inconsistencies in Ford's testimony and to the possible motives this witness might have had for testifying falsely. But, as we have repeatedly held, the credibility of witnesses is a matter to be resolved by the jury, not an issue to be contested on appeal. See, e.g., *United States* v. *Compagna*, 146 F. 2d 524, 526 (2 Cir. 1944) (per L. Hand, *J.*).

Apart from the evidence of unreported income, the jury could have reasonably inferred the necessary element of willfulness from the defendant's claim of two non-existent dependents throughout the four years here in question. Such assertions, particularly by one who was familiar with income tax forms, could hardly be dismissed as merely an act of ignorance or mistake. To the contrary, it would seem an almost inescapable inference that these false claims were asserted solely as an attempt to evade taxation.

V

Far more substantial is the appellant's assertion of prejudice. He contends that the Government's attempts to link him with improprieties allegedly committed by Congressman Powell and others in respect to the Dorie Miller housing project created a prejudicial atmosphere and deprived him of a fair trial. As a particularly glaring example of the alleged effort of the Government to transform this trial for tax evasion into an arena for political exposés, the appellant cites the following question put by the prosecutor to Congressman Powell when that witness for the Government first took the stand:

> "Now, Mr. Powell, has any pressure, in any manner, shape, or form, directly or indirectly, been put on you by the White House or anybody in the United States Government in connection with this case?"

The appellant also points out that approximately two-thirds of all the testimony offered by the Government concerned the Dorie Miller interracial housing project and the alleged payment of $3000 by David Kent to the Tenants Protective Association. This testimony subsequently was ordered stricken from the record by the trial judge on the ground that there was no evidence to show that the defendant had personally retained or ultimately received any part of the $3000.00.

It is the appellant's position that the striking of such evidence and the subsequent admonition to the jury by the court to disregard that evidence were insufficient to dispel the prejudice created during several days of lengthy testimony by a number of Government witnesses. There is much merit to this contention. Cf. *Krulewitch* v. *United States*, 336 U. S. 440, 453 (1949) (concurring opinion of Mr. Justice Jackson); *People* v. *Robinson*, 273 N. Y. 438, 445-46, 8 N. E. 2d 25 (1937).

Nevertheless, despite our abhorrence of any effort by either party to insinuate politics into a criminal prosecution, we do not believe that this appellant is entitled to a new trial on the facts and circumstances of this case.

Our reasons for so believing are several: (1) Putting any personal skepticism aside, we are not prepared to label as disingenuous the Government's initial line of proof concerning the Dorie Miller project. Apparently at the outset of the trial the prosecution believed it could prove that the defendant personally pocketed all or some of the $3000 allegedly paid to the Tenants Protective Association by David Kent. (2) At the very first attempt by the Government to introduce testimony relating to this facet of the case, the trial court ruled that such evidence would only be admitted "subject to connection." Counsel for the defense did not appear to contest this ruling, as his primary concern at the trial seemed to be with the relevance, not the possible prejudice, of this evidence. (3) Significantly, at no time during the trial did the defendant move for a mistrial on the ground of prejudice. (4) The trial court immediately sustained the defendant's objection to the question, quoted above, that was asked of Congressman Powell by the Government Attorney. Despite the defense counsel's apparent disturbance at such a line of inquiry, he himself interrogated Dr. Powell at some length as to whether anyone from the Government, other than the United States Attorneys, had spoken to the witness relative to his testifying in this trial. (5) At the end of the Government's case, since the prosecution had not shown that the defendant had personally profited from Kent's payment to the Association, the trial court dismissed the portion of the indictment that was based on that contention, struck all testimony relating to the Dorie Miller project from the record, and instructed the jury to disregard that testimony. The latter direction was repeated in the court's charge to the jury. (6) And, finally, the guilt of the defendant, on the basis of admissible evidence, is clear.

Judgment affirmed.

Judgments

June 12, 1956

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by Counsel.

On Consideration Thereof, it is now hereby

ORDERED, ADJUDGED AND DECREED that the judgment of said District Court be, and it hereby is, affirmed.

A. DANIEL FUSARO,
Clerk

(The identical judgment was entered on both appeals.)

Order Denying Petition for Rehearing

ORDER OF COURT

July 12, 1956

A petition for a rehearing having been filed herein by counsel for the appellant.

Upon Consideration Thereof, it is

ORDERED, that said petition be, and it hereby is, denied.

A. DANIEL FUSARO,
Clerk

(There was but a single order entered on both appeals.)

Statutes Involved

U. S. C. A., *United States Constitution, 5th Amendment*:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law * * *."

U. S. C. A., *United States Constitution, 6th Amendment* —Jury Trial for Crimes, and Procedural Rights:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

U. S. C. A., Title 26 Int. Revenue Code, Sec. 145(b) states as follows:

> "(b) Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be

fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

U. S. C. A. *Title 28—Judiciary and Judicial Procedure.*

Sec. 2111. *Harmless error.*

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties. Added May 24, 1949, c. 139, Sec. 110, 63 Stat. 105.

Title 18 U. S. C. A.—Rules of Criminal Procedure.

Rule 52: *Harmless Error and Plain Error.*

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

U. S. C. A., *Title 18—Rules of Criminal Procedure.*

"Rule 31. *Verdict*

(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the judge in open court."

Office-Supreme Court, U.S.
FILED
SEP 24 1957
JOHN T. PEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 342

ACY LENNON,

Petitioner,

AGAINST

UNITED STATES OF AMERICA,

Respondent.

ACY LENNON,

Petitioner,

AGAINST

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 349

ACY LENNON,

Petitioner,

AGAINST

UNITED STATES OF AMERICA,

Respondent.

ACY LENNON,

Petitioner,

AGAINST

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF FOR THE PETITIONER

Argument

The following conclusions reasonably may be drawn from a reading of the Government's opposing brief:

1) The Solicitor General recognizes the issue raised by the Trial Court's charge (Point II: Petitioner's Argument, p. 37) and that it is novel, important, and has not been resolved by this Court:

2) The Government has not met the issue of prejudice raised by the Petitioner. The Petitioner never has, and does not now complain of minor technical errors in the admission of irrelevant testimony; the Petitioner does maintain that an atmosphere of prejudice was created by the Government and converted Petitioner's trial into a political arena on an irrelevant issue and deprived him of a fair trial;

3) The cases cited in the Government's brief have no application to the issues raised by the Petitioner; and

4) There are vital errors of fact in the Government's brief, which serve to invalidate the conclusions drawn by the Government therefrom.

Upon the Petition and after consideration of the Government's brief, it is respectfully submitted that certiorari should be granted for either one or both of the following reasons:

1) The issue raised by the Trial Court's charge as a result of the Government's use of omnibus counts, and the measure of protection to which a defendant is entitled when accused under an omnibus count, are issues of such importance to the fair and impartial administration of criminal justice in our Federal courts as to more than warrant this Court's ruling thereon; and

2) The charge of prejudice made by the Petitioner is so supported by the record as to more than satisfy the conclusion that the standards fixed by this Court for a fair and impartial trial have not been met and that the exercise by this Court of its supervisory powers over the administration of justice in the Federal courts is more than merited.

To the extent that this Reply may be somewhat lengthier than usual, it is respectfully drawn to the Court's attention that such length is caused by the necessity of referring to errors of fact contained in the Government's brief.

POINT I

The question raised on the charge is novel, important, of first impression in this Court and requires this Court's ruling on an issue vital to the fair and impartial administration of justice in the Federal Courts.

The Government's brief implicitly recognizes that the issue raised by Petitioner's Point II is novel and important. That the issue has not been resolved by this Court is clear.

Andres v. United States, 333 U. S. 740 (the only case cited on this point by the Government) did not treat with and is completely inapplicable to the issue raised.

The *Andres* case treated with a trial court's charge where two *related* issues were submitted to a jury. The reasoning of this Court in that case, however, supports Petitioner's contention of error in the Trial Court's charge.

The issue at bar arises on a simple set of facts uncomplicated by collateral factual or legal nuances. The Petitioner was charged in a single count with having been guilty of two unrelated acts.[1] Had he been charged in separate counts, each such count would have been legally

[1] Although the attempt is described in the indictment as the filing of a false return, the items of alleged falsity, i.e., dependents and unreported income, were spelled out in the indictment. Thus, the crime of filing a false return was completely dependent upon the Government being able to prove that the return was false as to unreported income, or dependents, or both.

sufficient and the jury would have had to be charged independently on each such count.

It is Petitioner's position that the fact that the two unrelated acts were combined in a single count should not have been and could not properly be used as a device to deprive him of the protection inherent in a proper charge on each unrelated act.

Contrary to the statement in the Government's brief (page 10), the Petitioner has always questioned the jury's conclusion (A. 210a, 245a).

To the extent that the Government's brief indulges in an *a priori* argument on the issue, the reasoning employed by the Government is demonstrably faulty. Speculation in the Government's brief as to how the jury arrived at its verdict cannot help to determine whether the Trial Court's charge was proper. If the charge was in error then the jury's verdict must fall. It cannot be presumed that the jury ignored the charge in reaching its verdict.

The Petitioner was indicted for wilfully *attempting* to evade income taxes. The methods allegedly employed by Petitioner were spelled out in the indictment as being the unrelated acts of taking improper dependents and failing to report income.

As defined by Section 145(b) the crime consists of "an attempt "in any manner". The words "in any manner" which appear in Section 145(b) do not so broaden the scope of a 145(b) trial as to leave the jury free to act independently of the specific charges in the indictment. Actually the words "in any manner" mean "in some manner" and the manner is as set forth and limited by the indictment.

The Government saw fit to include in each count two separate and unrelated manners of attempt—dependents and unreported income.

The crime of attempting to evade is a particular one of the unrelated manners is not and cannot be established if the 12 jurors are not unanimous on at least that one. It follows, therefore, that the charge of the Trial Court must be such as to ensure so far as possible, that the jury will not indulge in compromises but achieve unanimity on at least one of the methods of attempt.

Not only did the Trial Court fail to specifically charge the requirement of unanimity on at least one of the methods, but, in response to a specific request for instructions from the jury the Trial Court actually encouraged a compromise by specifically instructing the jury that: "It is not necessary to decide on each of the items referred to in the bill of particulars; * * *" (A. 202a). On such a charge the jury might reasonably conclude that if some were agreed on the dependents and the rest on the unreported income, they had satisfied the Trial Court's charge and were compelled to bring in a verdict of guilty as to the entire count.

The question is: Was the charge adequate in the face of the inclusion of two unrelated acts of attempted evasion charged in each count?

The Petitioner raises before this Court a question which affects the administration of justice in criminal trials, and upon which the Court has not been heard. It is respectfully submitted that on this ground alone certiorari should be granted.

POINT II

The factual and legal inadequacy of the Government's answer to the Petitioner's charge of prejudice.

The claim of prejudice arises from the Government's charge that Mr. Kent's payment of $3000 to Tenants Protective Association was income to the Petitioner on which

Petitioner wilfully attempted to evade taxes. Using that charge as its fulcrum, the prosecution proceeded to introduce a vast amount of testimony, all of which concerned itself with Congressman Powell and none of which was relevant to the Government's criminal charge against the Petitioner.

The Government tacitly admits that the entire performance was prejudicial to the Petitioner but asks this Court to overlook the unfairness of Petitioner's trial on the narrow ground that it believed it would connect the Petitioner with Mr. Kent's payment to T. P. A. and that such belief justified its conduct.

The argument offered by the Government is completely unacceptable unless the Government is prepared to state to this Court that it presented its own witnesses without knowing what their testimony would be. If this be so (and it is demonstrably not so) then it is respectfully submitted that the Government tried a criminal charge against the Petitioner without knowing whether it could support such charge.

If, on the other hand, the Government knew what its witnesses' testimony would be, then the Petitioner's charge that the Government intended to and did use his trial to expose Congressman Powell cannot be refuted.

Whichever be the case, Petitioner's conviction must be reversed for prejudice and for unfairness.

If the Government seriously believed that it could connect Petitioner with Mr. Kent's $700 payment to Tenants Protective Association, then the heart of its case would have had to be some testimony by Mr. Kent (who was its own witness) that he intended his payment to Tenants Protective Association to be a payment to Petitioner, or had paid Tenants Protective Association on

behalf of Petitioner and that in either event Petitioner knew that Mr. Kent's payment was income to him. Instead Mr. Kent testified to the contrary (G. 12a-13a).

The Government now attempts to infer that Mr. Kent changed his testimony at the trial from that previously given by him to the Senate and the F. B. I.

Mr. Kent testified at the trial on the Government's direct examination, that his testimony was the same as that he had given the Senate and the F. B. I. (G. 16a-17a). Although the Government had transcripts of his Senate testimony and his F. B. I. testimony, not a single variance was shown or attempted to be shown, nor did the Government see fit to introduce such prior testimony to show any variance. The present effort by the Government to infer that Mr. Kent testified differently at the trial than he had before the Senate or the F. B. I. is unfair and unsupported by the record. The conclusion is inescapable that the Government knew what Mr. Kent's testimony would be (G. 15a).

The Government's alleged effort to connect Petitioner with the $3000 collapsed on Mr. Kent's testimony.[2] Yet, the Government persisted thereafter in calling Messrs. Klein, Jackson, Powell, Ludeke, Bulson and Emanuel and Mrs. Perry, none of whom testified that the money paid by Mr. Kent was income to the Petitioner,[2] but all of whom did testify about Congressman Powell or Tenants Protective Association.

In a further attempt to rationalize its use of the $3000 issue, the Government's brief contains a series of "facts"

[2] The Government went so far as to put Congressman Powell on the stand without even first attempting to ascertain the nature of his testimony (G. 118a). Apparently the Government was more interested in examining Dr. Powell under oath, and was willing to leave to chance the effect of his testimony on its case against Petitioner.

involving a "cashier's check". There never was a cashier's check.[3] As a matter of fact, the record shows the Government's brief to be completely erroneous in this respect.

The Kent check (which was produced as an exhibit, Ex. 42) was made payable to Tenants Protective Association. It was deposited in the Tenants Protective Association's account (G. 67a). The Tenants Protective Association account required two signatures for the withdrawal of funds and Petitioner did not even have the authority to sign as one of such signatures (G. 68a-70a). "The check used to purchase the cashier's check" never existed and there was absolutely no testimony that any such check had been stolen or destroyed. The Tenants Protective Association check which Klein received was a certified check drawn directly on the Tenants Protective Association account (G. 68a, Ex. 16—G. 170a).

Not a single "fact" asserted in the Government's brief on the issue of the "cashier's check" can be found in the record.

In a further attempt to justify the prejudicial testimony, the Government claims that it was Petitioner and Mr. Hampton who made the loan to Mr. Klein. And that the Government was surprised by Mr. Klein's refusal to so testify.

The attempted inference in the Government's brief that the Government was surprised by Mr. Klein's testimony at the trial is unsupported by the record. The record

[3] Petitioner wasn't even an officer of Tenants Protective Association and had no check signing power on the T. P. A. account (G. 68a-70a). Petitioner had received other commissions from Mr. Kent, and to which Mr. Kent testified. However, the Government conceded that there was no claim that Petitioner had concealed such commissions and conceded that they were not involved in the case (G. 9a-11a).

is clear that the Government knew that Mr. Klein had changed his story and knew it six months before the trial (G. 33a-34a). Further, nothing that Mr. Klein had previously testified to before the Grand Jury, or swore to in a statement to the Treasury Department could possibly support a jury conclusion that the $3000 payment to Tenants Protective Association was income to Petitioner which he wilfully concealed in an attempt to evade income taxes (G. 36a-51a, Ex. 14, G-169a).

The Government in its own opening to the jury didn't even suggest that it was Petitioner and Mr. Hampton who personally loaned the money to Mr. Klein. As a matter of fact it was the Government who called Congressman Powell as its own witness to elicit the fact that it was not Petitioner but Dr. Powell who controlled the money and who decided to give it to Mr. Klein (G. 90a-93a).

The only rational conclusion to be drawn from all of the facts is that the Government planned to use Petitioner's trial as a means of publicly dealing with Congressman Powell. The following colloquy is revealing:

> "The Court: * * * However, let me ask you, Mr. Bolan, in connection with all this testimony what is it exactly that you are trying to establish about this $3000?
>
> Mr. Bolan: I am trying to establish whether or not it was Congressman Powell who had control over this $3000 or whether it was the Tenant's Protective Association" (G. 54a).

In an attempt to ameliorate the effect of the prejudice, the Government's brief offers the comment that on two separate occasions the Trial Court instructed the jury to disregard the $3000 *issue*. It is Petitioner's position that such instruction did nothing to overcome the prejudicial

ent to [illegible] testimony. It is Petitioner's former position that the Trial Court never instructed the jury to disregard the [illegible] testimony.

The Government's brief attempts to place the onus for the injection of politics into the trial upon Petitioner. Not only is this claim grossly unfair to Petitioner, who [illegible] a fair trial, it is completely inaccurate.

In its very opening to the jury the Government raised the issue of [illegible] political conduct by tying the [illegible] to Congressman Powell's campaign for reelection. (T. 19-21). When the Government called Mr. Ford as its very first witness, the prosecutor irrelevantly and unnecessarily asked him on direct examination:

"Q. Now, you ceased doing business with the Abyssinian Baptist Church in 1951, is that right.

A. August 1951.

Q. And what was the reason for the termination of your business? A. Congressman Powell and myself had a disagreement politically. We disagreed politically." (T. 39, see also T. 68).

It is clear beyond question that on every occasion, it was the Government who first injected politics into the trial.

It follows from the foregoing that Petitioner has established the following reasons for a grant of certiorari on this issue of prejudice:

1) The Government knew that it would not show any connection between the Petitioner and the Kent [illegible]

2) The Government deliberately embarked on the [illegible] course;

[illegible] Powell is [illegible] Point I in Petitioner's main argument

(3) All of the testimony regarding the $7000 was irrelevant insofar as a charge of willful evasion of tax by the Petitioner was concerned; and

(4) The introduction of the testimony coupled with the political slant of the testimony was so inflammatory and prejudicial as to deprive Petitioner of a fair trial.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

Abe Lenson,
Petitioner Pro Se

Leonard Feldman,
Of Counsel

Office Supreme Court, U.S.
FILED
SEP 6 1957
JOHN T. FEY, Clerk

No. 349

In the Supreme Court of the United States

OCTOBER TERM, 1957

ACY LENNON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 349

ACY LENNON, PETITIONER

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 1a-10a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 12, 1957; and a petition for rehearing was denied on July 12, 1957. (Pet. 11a.) The petition for a writ of certiorari was filed on August 7, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Whether the petitioner was deprived of a fair trial by testimony tending to show receipt of unreported income which was later stricken by the trial court for lack of connection with petitioner.

2. Whether, where the indictment charged a willful attempt to evade and defeat taxes by filing fraudulent returns which understated income and listed false exemptions, the petitioner was entitled to a special verdict indicating in which of the two respects charged the returns were false, or in the alternative to an instruction that there must be unanimous agreement that they were false in one or both respects.

STATUTES INVOLVED

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * * * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or

imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * * *

(26 U.S.C. 1952 ed., Sec. 145(b).)

Federal Rules of Criminal Procedure:

RULE 31. VERDICT.

(a) *Return.*—The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

* * * * * *

STATEMENT

On September 27, 1955, a five count indictment was filed against the petitioner in the United States District Court for the Southern District of New York charging that he willfully attempted to evade and defeat a large portion of his income taxes for the years 1949 through 1952, and his and his wife's taxes for the year 1953, by filing fraudulent returns in violation of Section 145(b) of the Internal Revenue Code of 1939. (R. 1a-6a.)[1] On July 2, 1956, a second indictment was returned by another grand jury which duplicated the first indictment except that an additional item of unreported income was added to the fifth count and a sixth count was added charging attempted evasion of joint income taxes for the year 1954. (R. 1a, 7a-10a.) On August 21, 1956, the two indictments were consolidated by order of Judge Edmund L. Palmieri. (R. 2a.)

[1] The record consists of the Appendices to the briefs in the Court of Appeals. The appellant's Appendix is designated herein as "R." The Government's Appendix is designated "Supp. R."

The consolidated indictment charged that the amounts of net income and tax liability reported in the returns and corrected were as follows (R. 11a-14a, 184a, 188a):

	Reported		Corrected	
	Net Income	Tax	Net Income	Tax
Count I (1949)	$3,091.25	$ -0-	$4,691.25	$ 388.69
Count II (1950)	3,586.20	-0-	5,286.20	525.41
Count III (1951)	3,159.40	-0-	4,759.40	488.50
Count IV (1952)	2,657.63	-0-	4,157.63	390.19
Count V (1953)	3,772.32	304.66	7,357.82	1,123.62
Count VI (1954)	4,986.40	1,047.00	6,247.90	1,294.54

Counts one through five charged that, in addition to understating income, petitioner also falsely listed two dependents as exemptions. (R. 11a-14a.) Trial began on October 4, 1956. (R. 2a, 21a.) On October 19, 1956, the jury returned a verdict of guilty on Counts One through Four, not guilty on Count Five and reported that it was unable to reach a verdict on Count Six. (R. 210a-211a.) Petitioner was subsequently sentenced to imprisonment for a year and a day on each of the first four counts, sentences to run concurrently, and fined a total of $2,000. (R. 221a.) The evidence to support the verdict may be summarized as follows.

Petitioner is a married man, who has two daughters, Vivian Della and Barbara. (R. 44a, 74a.) During the prosecution years he was employed as a secretary by Congressman Adam Powell, Jr., of New York (Supp. R. 84a) and as the director of boys' activities of the Abyssinian Baptist Church in New York City, where Dr. Powell served as minister (Supp. R. 83a, 98a). From 1941 until sometime in 1951 he was also employed as a bookkeeper in a tax service operated by Joseph Ford at the Abyssinian Church. (R. 32a-33a.) Though he received $1,600 in 1949, $1,700 in 1950 and $1,600 in 1951 from Mr. Ford for his services as a bookkeeper

(R. 35a-40a; petitioner failed to report any income from this source.[2] In each of the returns for 1949 through 1952 petitioner claimed two non-existent dependent children, Acy, Jr. and William, whom he identified as sons, in addition to his daughters. (R. 41a-44a, 74a-76a, 78a; Supp. R. 161a-167a.)

The Government also alleged that in 1952 petitioner had $1,500 in commission income from the sale of apartments in a cooperative apartment project, which he did not report but concealed by using a non-profit organization as a conduit for handling the funds. Testimony relating to these commissions was received subject to connection but later stricken on the ground that the Government had failed to connect them with the petitioner (R. 135a-138a), and the jury was twice instructed that the issue of unreported commission income had been withdrawn and was not to be considered by it (R. 181a; Pet. 16).

ARGUMENT

1. Petitioner first contends that he was prejudiced by testimony indicating that improprieties may have been committed by Dr. Powell and others in connection with the sale of apartments in a cooperative apartment building. (Pet. 23.) The testimony to which he objects was introduced under the following circumstances:

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[2] Petitioner reported only his church and congressional salaries and the following miscellaneous items: 1949, $280 from the "Citizens Comm." and $367.71 from "Telephone & Commissions"; 1950, $132 from "Concession Telephone" and $160 from "Rebate from ice cream"; 1952, $1,280 from "Commissions, Publications, etc." He claimed a loss of $1,583.48 in 1949 and $1,321.44 in 1950 from the operation of a stationery store, a loss of $1,712.50 in 1951 from a confectionery business and a loss of $2,713.42 in 1952 from a stationery and candy store. (Supp. R. 161a-467a.)

The Government sought to prove that in 1952 petitioner had $1,500 in unreported commission income from the sale of apartments in a cooperative apartment house project being built and promoted by one David Kent, which income he attempted to conceal by using the Tenants Protective Association, Inc., as a conduit for handling the funds.[3] (R. 135a-136a.) This association was a non-profit corporation organized and headed by Dr. Powell to assist tenants in the Harlem area of New York City. (Supp. R. 85a, 117a-118a.) The Government's evidence, which was received subject to connection, tended to show that petitioner and one William Hampton (another employee of Dr. Powell) were engaged by Kent to sell the apartments. (Supp. R. 15a-18a.) The evidence showed that the Association received a check in the amount of $3,000 as the commission on the sale of 200 apartments sold by petitioner and Hampton (Supp. R. 7a-8a, 11a-12a); that the check was deposited in the Association's bank account on July 11, 1952 (Supp. R. 67a-71a); and that on July 17, 1952, this sum was withdrawn and used to purchase a cashier's check payable to Paul Klein (Supp. R. 63a-66a; 171a).[4] In an effort to show that the commissions from the sales were petitioner's and Hampton's rather than the Association's, and that they used them in making a personal loan to Klein, the

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[3] It is well settled that tax liability on income which is in a taxpayer's use and control cannot be defeated by placing bare title in another. *Higgins v. Smith*, 308 U. S. 473; *Greenwood v. Helvering*, 293 U. S. 465; *Corliss v. Bowers*, 281 U. S. 376.

[4] The check used to purchase the cashier's check had been stolen or destroyed. (Supp. R. 94a-96a, 113a-115a.) All officers of the Association authorized to sign checks except Dr. Powell, testified that they had not signed it. (Supp. R. 76a-81a.) Dr. Powell testified that he did not recall if he had signed such a check or not. (Supp. R. 101a.)

Government called Mr. Klein and Dr. Powell. (Supp. R. 6a, 19a, 85a-86a.)

Despite efforts to refresh Mr. Klein's memory with a statement he had given to an investigating agent and his testimony before the grand jury (Supp. R. 21a, 34a-51a, 169a), he testified that he had no recollection of receiving the money or any circumstances surrounding it (Supp. R. 20a, 31a-32a, 57a). Dr. Powell testified that the apartments were sold by petitioner and Hampton as well as other members of his staff for the Association which received the $3,000 from Kent as a donation for handling the sales, and that the Association had become inactive the money was given to Klein for work done in the past in behalf of various causes with which he (Powell) was connected. (Supp. R. 85a-91a.)

Upon petitioner's motion, this testimony and all other evidence relating to the receipt and disposition of the commissions was stricken on the grounds that there was no evidence that petitioner received any part of them. (R. 135a-138a.) The trial court thereupon instructed the jury that the issue of unreported commission income was removed from the case and was to be disregarded. (Pet. 16.) Again in the charge to the jury, in which the evidence as to each count in the indictment was discussed in considerable detail (R. 172a-196a), the trial court instructed the jury that the issue of unreported commission income for 1952 had been withdrawn and the only question for consideration as to that year was whether false exemptions had been claimed (R. 181a).

Though his motion to strike was granted and he did not move for a mistrial (Pet. 30), petitioner now urges that testimony with regard to "improprieties which

may have been committed by Congressman Powell and others, created an atmosphere prejudicial to him (Pet. 23). This contention is without merit. As indicated, the testimony complained of was introduced to show an alleged item of unreported income in the 1952 return and was therefore clearly relevant (See *Kelly[illegible]son* v. *United States*, 318 U.S. 189, 195-196; rehearing denied, 318 U.S. 801.) It is well settled that evidence otherwise relevant is not inadmissible though it exposes the defendant to odium or indicates the possible commission of crimes other than those charged. *United States* v. *Caserta*, 199 F. 2d 905 (C.A. 3d); *United States* v. *Crowe*, 188 F. 2d 209 (C.A. 7th); *Smith* v. *United States*, 236 F. 2d 260 (C.A. 8th); certiorari denied, 352 U.S. 909; *Schwartz* v. *United States*, 160 F. 2d 718 (C.A. 9th).

Contrary to petitioner's contention (Pet. 27), the Government had adequate reason to believe that it could be shown that the commission income was income to petitioner and Hampton rather than the Association. Unlike his testimony at trial, Kent, the promoter of the apartment project, when questioned before trial by the Federal Bureau of Investigation and a United States Senate Committee concerning the sale of the apartments, did not mention the Tenants Protective Association but spoke only of dealing with petitioner and Hampton. (Supp. R. 16a-17a.) Moreover, Klein had testified before the grand jury and given a statement during the investigation that upon Dr. Powell's recommendation he had been loaned $3,000 by petitioner and Hampton which had been on deposit in the Association's account. (Supp. R. 21a, 34a-40a, 169a.) Had he repeated these statements at trial the jury could have reasonably concluded that the Tenants Pro-

tective Association was merely being used by petitioner and Hampton to conceal receipt of income which they used for their own purposes.

Similarly, petitioner's contention (Pet. 31) that he was prejudiced by a question directed to Dr. Powell for the purpose of determining if he (Powell) had been subjected to any political pressure in regard to the case is without merit.[5] The trial court immediately sustained petitioner's objection to the question before a reply was given and twice instructed the jury that politics should not be considered in weighing the evidence. (R. 173a; Supp. R. 84a.) As the Court of Appeals points out (Pet. 10a), despite petitioner's objection to the Government's question his counsel proceeded to question Dr. Powell extensively as to whether anyone from the Government had even attempted to talk to him about the case. (Supp. R. 118a.) Moreover, petitioner's counsel had previously questioned Government witness Ford concerning his political rivalry with Dr. Powell. (R. 112a-113a.) We submit that if, as petitioner alleges, political considerations were, to any extent, injected into the trial, they were injected by the questioning of his own counsel.

2. Petitioner next urges that he was entitled to a special verdict requiring a finding as to whether he willfully omitted a portion of his income and/or listed false exemptions as to each year, or in the alternative to an instruction that there must be unanimous agreement as to the manner in which each return was false, and that the trial court's failure so to instruct induced

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[5] Shortly after he took the stand Dr. Powell was asked, "Now Dr. Powell, has any pressure in any manner, shape or form, directly or indirectly, been put on you by the White House or anybody in the United States Government in connection with this case?" (R. 131a; Supp. R. 84a.)

a compromised verdict. (Pet. 35-43.) The novelty of this contention aside, it ignores the nature of the verdict in a criminal case and the crime with which petitioner was charged.

As this Court stated in *Andres* v. *United States*, 333 U.S. 740, 748, "A verdict embodies in a single finding the conclusions by the jury upon all the questions submitted to it." Here the crime charged was the willful attempt to evade taxes in any manner, defined by Section 145(b). The only issue before the jury was whether such an attempt had been made. The indictment charged and the Government's evidence showed that the attempt was made by filing returns which were false in two respects, *i.e.*, omitting income and listing false exemptions. Falsity in either respect would result in the evasion of taxes. The requirement of unanimity was therefore satisfied if each juror found, as the verdict indicates each juror did find, that the returns were false in either one or in both respects and filed with the intent to evade taxes. That this was the jury's conclusion is not questioned by the petitioner.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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